

No. 14739

United States
Court of Appeals
for the Ninth Circuit

ROLLAND LINDSEY, Appellant,
vs.
UNITED STATES OF AMERICA, Appellee.

Transcript of Record

In Two Volumes
VOLUME II.
(Pages 273 to 530, inclusive.)

Appeal from the District Court for the District of Alaska,
First Division

PAUL P. OFFEN, CLERK

JUL 11 1955

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(Testimony of Rolland Lindsey.)

Mr. Munson: I object on the ground of immateriality.

The Court: I think it is immaterial. The only thing that would be material is where she slept when she started sleeping upstairs, under the indictment.

Mr. Ziegler: If the Court please, maybe I am all wrong about this, but my understanding of Loretta's testimony is that Loretta claims that these things went on from the time she was seven years on, and it is material in that respect to see if they were all living downstairs there where they would all be together and whether these things did occur. Now, the jury might feel that——

The Court: Well, if that is the testimony, why, of course you may go into the location of the room in which Loretta slept before she moved upstairs.

Q. (By Mr. Gilmore): Tell us about where Loretta slept and what the house was like before this present situation came into being.

A. The house is twenty-four feet wide now, and we lengthened——

The Court: Just tell where she slept, and then we will get along here a little faster.

A. She slept in the entrance now to where we go upstairs. [299] That was a small bedroom about 6 by 9, and Bob slept in the same bedroom. The wife and I slept in the little bedroom off the front, and the house was eighteen feet in width at that time.

Q. All on the same floor?

A. All on the same floor.

(Testimony of Rolland Lindsey.)

Q. And adjacent to each other **there?**

A. That is right.

Q. And when did you rebuild your house so as to provide these additional rooms?

A. In 1950, in the fall.

Q. Do you remember that distinctly?

A. I am pretty sure it was then.

Q. Was there anything that prompted you particularly in providing additional space and private bedrooms? A. My main object was——

The Court: I don't know how that could be material.

Whereupon respective counsel and the court reporter approached the bench, out of the hearing of the jury, and the following occurred:

Mr. Ziegler: If the Court please, the purpose for this testimony is to show that up until a pretty mature age that the boy and this girl slept in the same room.

Mr. Munson: I think that is highly prejudicial.

Mr. Ziegler: Well, he is charged with having caused [300] her condition. If we can show circumstances from which it would be inferred somebody else——

Mr. Munson: He was eleven.

The Court: I can't pay attention to you both at the same time. The question, as stated, was what led him to build on these other rooms.

Mr. Ziegler: And the children getting so old and living in the same room, that he deemed it advisable for their protection.

(Testimony of Rolland Lindsey.)

The Court: I don't know how that could be material. My heavens.

Mr. Ziegler: I think there is testimony showing that there was a situation existing and occurrences which required this kind of an action.

Mr. Munson: Could I interject a word?

The Court: No. I have heard enough. I don't want to hear any of that. It is just cluttering up the record and taking time.

Whereupon respective counsel and the court reporter withdrew from the bench and were again within hearing of the jury, and the trial proceeded as follows:

Q. (By Mr. Gilmore): Now, were you in Ketchikan, Mr. Lindsey, at the time shortly prior to last Easter when the charge was made, that you have heard testified to, of improper acts, against you by Loretta? [301]

A. Not to the authorities. You mean before she went? I was.

Q. And I am talking about the time when Loretta—the testimony was that Loretta made this charge to her grandmother and then came over to your house, to your home, and repeated the charge to your wife? A. Yes.

Q. You were in Ketchikan? Were you present then?

A. No, I wasn't in Ketchikan at that moment.

Q. I see. Where were you at the time.

A. I was in my logging camp.

(Testimony of Rolland Lindsey.)

Q. And when following that report did you come to Ketchikan?

A. I came to Ketchikan on a Friday night, I believe.

Q. Well, just how soon—— A. No.

Q. Well, how long after that report now?

A. It was on a Saturday night, and it was just two or three days; I am not sure just how long.

Q. Now, when you came to Ketchikan, did you learn that a report had been made against you, a charge of some kind, an allegation, by Loretta?

A. My wife told me that Saturday night about two o'clock.

Q. Had any report been made to the authorities or any official action been taken that you know of? A. No; not that I know of.

Q. And it was about two o'clock in the morning. Was that [302] before you retired or upon retiring that day? A. We had already retired.

Q. What was done or what did you do following the hearing of that report?

A. The next morning I called up Mrs. Pawsey's home.

Q. Don't say what you said but tell us what you did.

A. I called up Mrs. Pawsey's home and found out that Loretta and Mrs. Pawsey were over in Metlakatla. I had her uncle, Mrs. Pawsey's son, Patrick, come to the home and to our house, and I told him that I had my boom out there. It was bad weather. It was anchored in a very bad place, and

(Testimony of Rolland Lindsey.)

that I couldn't leave it there, and I had to go right back, either that night or early in the morning to get my boom, and there was three months work in it. At that time I didn't think it was such an important thing because these kids had run away numerous times and accused us of numerous things, although they didn't ever accuse me of anything before, and it was always their mother that they accused.

Q. When you mentioned running away, I gather then that Loretta was not at your home when you got home from your camp?

A. No, she wasn't home. And I went out or I had Mr. Pawsey come up and I told him that, if he could, to have the grandmother keep the children at home and tell them not to [303] tell this around the streets and that, when I got in from my boom, which would be three or four days, which I figured it would be, we would all get together and get this thing straightened up.

Q. In the light of your having heard about this statement that Loretta made concerning you, why did you go out of town then without straightening out the situation or attempting to?

A. I believe I have already stated that, haven't I?

The Court: Well, I don't know that you have or not, but I don't know how it would be material.

Q. (By Mr. Gilmore): Well, were you concerned about the statement particularly, Mr. Lindsey?

(Testimony of Rolland Lindsey.)

Q. And when following that report did you come to Ketchikan?

A. I came to Ketchikan on a Friday night, I believe.

Q. Well, just how soon—— A. No.

Q. Well, how long after that report now?

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Q. In the light of your having heard about this statement that Loretta made concerning you, why did you go out of town then without straightening out the situation or attempting to?

A. I believe I have already stated that, haven't I?

The Court: Well, I don't know that you have or not, but I don't know how it would be material.

Q. (By Mr. Gilmore): Well, were you concerned about the statement particularly, Mr. Lindsey?

(Testimony of Rolland Lindsey.)

A. Not greatly. I felt that we would straighten it out when I got home.

Q. And when did you return then again?

A. The next Saturday, I believe; Saturday morning.

Q. And did you go to your home at that time after you got back?

A. No, I didn't. I hit Ketchikan about noon with the boom, but I didn't—I took it on through——

The Court: Just answer the question, otherwise we will never get through with this case.

Q. (By Mr. Gilmore): Well, now, tell me, Mr. Lindsey, were you served with a warrant that day or upon your return [304] to Ketchikan from that trip? A. I was.

Q. And where were you when that warrant was served?

A. I was in the office of the United States Marshal.

Q. Did the Marshal see you before that?

A. He did.

Q. And where was that?

Mr. Munson: I object to this, your Honor.

The Court: Objection sustained. We can't spend time here tracing this person's movements and actions ever since.

Q. (By Mr. Gilmore): Now, you heard Loretta testify at the preliminary hearing in the Commissioner's Court, did you, Mr. Lindsey?

A. I did.

Q. Did she make any statements at that pre-

(Testimony of Rolland Lindsey.)

liminary hearing that were inconsistent with her testimony on the witness stand here yesterday?

Mr. Munson: I object. It is impeachment again without foundation, your Honor.

The Court: Yes; and it calls for the conclusion of the witness.

Mr. Gilmore: Well, he certainly knows. I mean, it is just the bare statement.

The Court: You are asking him to express an opinion [305] upon her testimony, the testimony she gave or didn't give. Now, it is up to the jury to draw any inference or opinion, except in the case of an expert witness, and this man is not an expert witness.

Mr. Gilmore: Very well, your Honor.

Q. (By Mr. Gilmore): Now, when is the first time, Mr. Lindsey, that you ever heard in your life of any complaint by Loretta against you for any improper acts that you were supposed to have committed toward her?

A. When I came home the first time and they told me that she had run away.

Q. Had she ever mentioned anything to you or to your wife before that, that you know of?

A. She had never mentioned anything to me nor no one else to my knowledge.

Q. When is the first time you ever heard her directly make any assertion about improper conduct?

A. At the preliminary hearing.

Q. Now, do you remember the day that she came

(Testimony of Rolland Lindsey.)

out to your home between nine and ten one morning after her return from Wrangell? A. I do.

Q. You were home then? A. I was.

Q. Who else was home? [306]

A. My wife and the babies.

Q. And what did she say when she got there?

Mr. Munson: I object, your Honor. This is about the fourth witness to testify to this same incident and the same set-up.

The Court: Objection sustained.

Q. (By Mr. Gilmore): Well, what did you do, what did you do following or what was done following her coming to your home? I will withdraw that. I will ask you this question, Mr. Lindsey. Do you know why she came out to your home that morning?

Mr. Ziegler: Did she tell you why?

A. She told me why.

Q. (By Mr. Gilmore): So, you know why. Why did she come to your home that morning?

A. She told me that she came home to tell the truth and drop these charges against me.

Q. And what did you do after hearing that?

A. I called my attorney and asked him what the legal procedure would be in the case.

Q. Following that, what did you do?

A. On my attorney's advice I took her down to his office, and she made out this affidavit we have, and the affidavit states that I didn't do any of this.

Q. Did you go directly from your house down to your attorney's [307] office? A. We did.

(Testimony of Rolland Lindsey.)

Q. Did you any place en route or stop any place en route? A. We did not.

Q. Did you discuss the matter that she was going to tell about, when she got there, on your way down? A. We did not.

Q. Did you have any conversation with her about how she would explain the results of her physical condition? A. I did not.

Q. Did you tell her that she should say, at that time and that place, that she could say that it was caused by a banana that she put in there?

A. I did not.

Q. How long did it take you to go from your home down to Mr. Zeigler's office that morning, about? A. Between five and ten minutes.

Q. Who did you see when you got there?

Mr. Munson: I object, your Honor.

The Court: I don't think there is any dispute about who was there.

Mr. Gilmore: All right.

Q. (By Mr. Gilmore): Now, after you got there, what did Loretta do and say.

A. She told Mr. Ziegler that she had came to tell the truth [308] and drop the charges against her daddy and that she wanted to sign papers and tell him about it and sign papers to that effect.

Q. What did she say about the original charges that she had made against you?

A. That they weren't true.

Q. Did she give any explanation as to why she made such a charge against you in the first place?

(Testimony of Rolland Lindsey.)

Mr. Munson: I object on the ground that no foundation has been laid for this question with the complaining witness, your Honor.

The Court: The question was, did she explain why she brought them?

Mr. Gilmore: Yes, your Honor; in the first instance, if she did.

The Court: Well, that calls for a conversation again that apparently is not in the statement.

Mr. Gilmore: Well, it wouldn't necessarily be contrary to the witness'—

The Court: But the witness has got to have been given the opportunity to deny it or admit it, and, if that isn't done, why, this witness can't be permitted to impeach her.

Mr. Ziegler: Well, if the Court please, as I understand the Court's ruling, we are perfectly willing to have [309] Loretta called back and give her a chance to deny or admit it, but I understand the Court won't permit it. Now, we offered to have that done and are willing to have it done.

The Court: You mean, you want her called back on the stand.

Mr. Ziegler: That is right.

The Court: And I ruled on that a while ago when I said that, if it were due to something that you didn't know of at the time or if it had been overlooked as a result of inadvertence or something, that would be permitted but not if it was merely due to ignorance of the rule, and nothing further

(Testimony of Rolland Lindsey.)

was said, so I assumed that those conditions couldn't be met.

Q. (By Mr. Gilmore): Now, I ask you, Mr. Lindsey, whether or not up in Mr. Zeigler's office that morning Loretta didn't make a complete, voluntary retraction of the charge that she had previously made against you? A. She did.

Q. Did she state that she had lied previously when she made the charge against you?

A. She did.

Q. Did you use any influence or duress or coercion on her to get her to make that statement?

A. I did not; none whatsoever.

Q. Do you think by your relationship alone, of being her adopted father, that she was influenced into making that [310] statement?

Mr. Munson: I object. He is invading the province of the jury. It is an inference for the jury to determine, your Honor.

The Court: Yes. You are calling for an inference now on his part.

Mr. Gilmore: Very well, we will leave that to the jury to decide, and I will be satisfied with that.

Q. (By Mr. Gilmore): Now, I will ask you this. Did Loretta write to you and your wife from Wrangell before she came down here?

The Court: That is all undisputed in the evidence.

Mr. Ziegler: That is preliminary, your Honor.

The Court: Well, go to the next question. Never mind the preliminary question when what

(Testimony of Rolland Lindsey.)

would be elicited by the preliminary question is already in evidence.

Mr. Gilmore: All right.

Q. (By Mr. Gilmore): Was Loretta coming down here to do the very thing that she did, before she did come down here? A. Absolutely.

Mr. Munson: I object. It calls for a conclusion of the witness, your Honor.

The Court: Yes. Objection sustained.

Mr. Gilmore: If he knows; but it is based on knowledge, your Honor. [311]

The Court: Why, you are asking him for what was, practically, in her mind when she left Wrangell.

Mr. Gilmore: What, your Honor?

The Court: You are asking him as to what was in her mind when she left Wrangell.

Mr. Gilmore: If he knows.

The Court: Well, how could he know?

Mr. Gilmore: Through the letter he got the next day.

The Court: Well, then, you can ask him whether he knows from the letter, and, if you ask him that, then it is for the jury to draw the inference.

Q. (By Mr. Gilmore): Had you received that letter the morning that Loretta came out to your house? A. No, sir.

Q. Did she mention having written to you?

A. Not to me, but to my wife.

Q. I see. Do you know when this letter was post-

(Testimony of Rolland Lindsey.)

marked with reference to the date that she left Wrangell?

A. Well, I believe it was on a Saturday; I am not sure; or Monday, was the day after she had written it.

Q. And when did you receive the letter in relation to the time that Loretta came out to your house?

A. It was either that afternoon on the afternoon mail delivery or it was the next day; I am not sure which; I don't remember just which day it was.

Q. Well, now, the testimony has been—I don't know whether you remember the exact day—but it was the 25th of August that she made this statement——

A. Well, that is the exact day. I know it is.

Q. That is the day. Now, on this exhibit the cancellation of the Wrangell Post Office shows August 23rd——

Mr. Munson: Are we arguing this, your Honor?

The Court: It is already in evidence, and the postmark is in evidence, so I don't know why we should——

Mr. Gilmore: Well, but, as yet, this——

The Court: ——kill a stuffed tiger or something of that kind.

Q. (By Mr. Gilmore): Did Loretta, when she was making this retraction of the charges against you, tell you why she had made the charges against you up in the lawyer's office?

Mr. Munson: I object on the same ground, that

(Testimony of Rolland Lindsey.)

there was no foundation laid for any conversation between this defendant and Loretta concerning——

The Court: She wasn't asked anything of a conversation of that kind. Objection sustained.

Mr. Gilmore: If the Court please, and with leave of the Court, I would like to read one of the letters, which is part of the Defendant's Exhibit A, at this time, and of course the letter that we are talking about.

The Court: Very well. [313]

Mr. Gilmore: This is the letter dated "August 22, 54. 10:15 p.m." It reads: "Dear Mom, I know just how mad you are at me. But I hope you will forgive me. I hope you can do it. I know how hard it will be. When you made me fold clothes I got real mad. I right now I would beg to do it. I hope you will forgive me for what I have done. You and Dad got me when I was a little bum, and gave me a real nice home. So what did I do. Please forgive me. Love, your daughter, Loretta."

This is another letter in the Exhibit A, dated August 22nd: "Dear Mom and Dad, I beg for forgiveness right now. I have only thought of myself in this matter. Dad, I hope you will forgive me. I know I made a mess of things for you and Mom and Randy and Janice and Pat. I'm going to drop the charges that I made against you, Dad. That will mean that you will be back at your house. I guess family love is a thing just one person can't break. I guess Mom was right when she said that I was jumping out of the frying pan into the fire. I hope

(Testimony of Rolland Lindsey.)

bygones are bygones. I know that you and Mom were doing what you thought was right for me. I hope when I come back home I can make up for what I did. Love, your daughter, Loretta."

August 22, 10:00 p.m.: "Dear Dad, I hope you forgive me. I know it is a lot to forgive. But, my love for you and Mom and kids is too much to forget too. I have changed a [314] lot in many ways. I will do as I'm told to do, when I come back home to my family. Love, your daughter, Loretta. Over. Oh, yes. I'm dropping the charges that I made against you."

Dated August 22: "Dear Randy, and Janice, and Pat: I know you won't be able to read this. But Mommy will read it to you. I would give my right arm to see you guys. I hope you will forgive me for what I have done to you. I will make it up to you guys too. Love, your Sis, Retta."

The Court: Now, is there any objection on anybody's part to commencing at 9:30 tomorrow morning?

Mr. Munson: No objection on the Government's part, your Honor.

The Court: Any objection on the jury's part?

(No response.)

Whereupon Court adjourned until 9:30 o'clock a.m., November 24, 1954, reconvening as per adjournment, with all parties present as heretofore, and the jury all present in the box; the defendant Rolland Lindsey resumed the witness stand, and the

(Testimony of Rolland Lindsey.)

Direct Testimony by Mr. Gilmore was continued as follows:

The Court: In connection with the offer of the affidavit into evidence——

Mr. Ziegler: If the Court please, it is not an affidavit. It is just a sworn statement.

The Court: I have concluded that since the substance [315] of the statement is already in evidence that the statement itself may be admitted.

Mr. Gilmore: May be proceed, your Honor?

The Court: Yes; you may proceed.

Mr. Gilmore: We offer it as evidence, as Defendant's Exhibit B.

Clerk of Court: It will be so marked.

Q. (By Mr. Gilmore): Now, Rollie, I wonder if since yesterday afternoon when you got through testifying at 5:00 o'clock or 5:30 last evening, if you were able to recall another specific instance which led to a reprimand followed by a strong, defiant feeling of animosity and an expression of it on the part of Loretta? A. I do.

Q. Within the time limitation, that is, within the thirty days preceding the bringing of the charges? A. I do.

Q. Will you tell the jury about it, please?

A. We were at the dinner table and——

Q. Try to set the time.

A. It was approximately ten days or two weeks before she ran away, and Mrs. Lindsey had been having trouble with them so she decided to send Loretta to Haines and to send Bobby to Sitka, and

(Testimony of Rolland Lindsey.)

Loretta was very mad about this, and Bob said he would run away from home before he would go [316] up there, and afterwards they came in the front room to me after dinner, and I told them at that time not to come to me this time for help because I was through protecting them, when Mother was going to send them away, or helping them along as I had done, that, if she decided that they were to go there this fall, they had six months to straighten up and, if they didn't straighten up, that they was going there if that is where she wanted them to go.

Q. Rollie, did you find amongst Loretta's things a letter, also within the time limitation, that indicated that she was going away? A. We did.

Q. And, if I show you this——

The Court: Well, now, was the witness Loretta Lindsey questioned about that?

Mr. Gilmore: Yes, I think she was, about going away, your Honor.

The Court: Well, you just have another incident or example of what the Court has been trying to make plain by its rulings, that here was this conversation related between the defendant and Loretta about being sent away, about which the witness Loretta was not asked. Now, that will mean that the prosecution will have to recall her, all of which produces disorder and confusion. Before a witness may be asked about [317] any conversation that would tend to contradict or impeach a prior witness, the prior witness must have been asked that

(Testimony of Rolland Lindsey.)

when he or she was on the stand, and so we come down to it again in the case of this letter. I don't recall that that letter was ever made the subject of any examination of Loretta Lindsey.

Mr. Gilmore: I see. Well, naturally, your Honor, it was, like following the questions late yesterday afternoon between 5:00 and 5:30, that I intended to have him testify only, that was the animosity and then the reason for it, as to the instance about telling them that she was going to Haines, without relating the conversation.

The Court: Well, that may be. I understand what you intend to do; but, in ruling that acts of the kind which would justify an inference of hostility may be shown, I certainly didn't intend to depart from the rule that, if the act involved is conversation of any kind, there must be a foundation laid for it.

Mr. Gilmore: Well, your Honor, with reference to your previous ruling, I think my co-counsel will agree with me that in this particular instance, although we couldn't yesterday, that it was sheer inadvertence with reference to the omission of the questioning of Loretta with reference to this letter, and at the propitious time we would ask leave of the Court to recall her for further examination with the [318] Court's permission.

Q. (By Mr. Gilmore): Now, if I understood you correctly, Rollie, you testified last night that there was no door. This is Bob's room marked "B". This is Loretta's room over here. Is that correct?

(Testimony of Rolland Lindsey.)

A. That is correct.

Q. And there was no door on Loretta's room?

A. That is right.

Q. Did that situation continue right along?

A. That has been that way since we finished the part of the house when we built it altogether.

Q. Any wall or partition or anything like that between this open space and the doorway that leads in there to Loretta's room? A. No.

Q. Nothing to obstruct the opening into her bedroom there? A. No.

Q. And Bob's bedroom is here, is it not?

A. That is right.

Q. And this is the door into his bedroom?

A. Yes.

Q. He had a door on his room, I believe you testified? A. Yes.

Q. What did you testify as to whether it was finished on the sides? [319]

A. When a door——

The Court: He has already testified to all that. He even showed the space on each side of the door that was left open.

Mr. Gilmore: Yes.

Q. (By Mr. Gilmore): Now, Rollie, you heard Bob Lindsey testify that you went up to, upstairs, and he thought over into Loretta's room several times in the early morning hours. Did you ever do such a thing?

(Testimony of Rolland Lindsey.)

A. I believe he also said it was on weekends, and that would usually mean a Sunday morning. My wife and I went to the lodge usually on Saturday night to the dance. We would get home all the way from 2:00 o'clock to 4:00 o'clock.

Mr. Munson: Your Honor, I object. He is not answering the question.

Mr. Gilmore: Well, that is right.

Q. (By Mr. Gilmore): That is preliminary, Rollie. Just try to kind of answer my question more directly, if you will, please.

A. Ask it again so I can answer it directly; will you please?

Q. Well, I asked you whether or not you recall Bob Lindsey testifying that on several occasions he thought he heard you, he heard you come upstairs and thought he heard you walk over and go into Loretta's room in the wee, early hours of the morning. [320]

A. I never went into her room in the morning, which was very seldom, except later than 7:30 or 8:00 o'clock. That would have been the very earliest.

Q. Do you feel certain about that, Rollie?

A. I do.

Q. Would there be any occasion for your going there prior to the time when she was to get up?

A. Absolutely none.

Q. Did you on occasion go upstairs to wake the kids up? A. I did.

(Testimony of Rolland Lindsey.)

Q. And frequently? A. Yes.

Q. Were they light or heavy sleepers?

A. They were both very heavy sleepers.

Q. Rollie, with reference to the statement that has been introduced, the Defendant's Exhibit B, after the statement was made by Loretta, and she answered these questions up in Mr. Ziegler's office, did you and Loretta leave the office, the law office?

A. We did.

Q. Did you leave together, that is, go together some place, when you left the law office?

A. When we left the law office the first time, I went home, and I am not sure where she went.

Q. Are you sure you didn't go anywhere together? [321] A. That is right.

Mr. Munson: I object, your Honor.

The Court: Is this supposed to be in rebuttal of something?

Mr. Gilmore: No. It is just——

The Court: It is immaterial where they went. It might be material for cross examination, but it certainly is immaterial for direct.

Q. (By Mr. Gilmore): Rollie, after the statement was signed, which was sometime in the afternoon, did you take a copy of this statement down to the United States Marshal's Office?

A. I did.

Q. And on whose instructions was that done?

A. It was on the advice of my attorney, but I felt the authorities should have it at the earliest possible moment.

(Testimony of Rolland Lindsey.)

Q. Now, Rollie, I am going to ask you whether or not there were occasions when you and Loretta were alone together, and, if so, tell us about it. What is the answer, first?

A. Yes; there was numerous times.

Q. All right. Was there ever a time when you harmed or made any advances to Loretta?

A. No; there was not.

Q. Did you ever engage in any immoral act with her? [322]

A. I did not.

Q. At any time? A. Never.

Q. You are charged in this indictment, Rollie, with having on——

Mr. Munson: I object, your Honor. He is well acquainted with the charges in the indictment.

The Court: Well, there are several charges. You have a right to—why don't you just call his attention to the charge you have in mind without reading it at length?

Mr. Gilmore: Yes; I was going to, on these various dates. That is all, your Honor.

Q. (By Mr. Gilmore): ——with having on October 22, 1951—does that date have any significance to you? A. It does.

Mr. Munson: Your Honor, he has already said he has never made any immoral advances on this girl. I don't see what purpose is served by taking specific dates and having him answer the same question six times.

The Court: Well, it seems to me it is a duplication.

(Testimony of Rolland Lindsey.)

Mr. Gilmore: Well, except, your Honor, that it has a tremendous significance to him, these dates. There is something kind of magical about these dates, and he can testify—he just said that there is some significance to this date—he can tell us about; and of course that is the very [323] date that the man is charged with committing this most heinous charge, and here is the allegation of it.

The Court: Well, if he answered, as I think he has, that he has never committed any of these acts that have been testified to by Loretta, I don't know how you can make it any more inclusive than that or any more conclusive, for that matter.

Mr. Gilmore: I see.

Mr. Ziegler: Will the Court permit me to be heard? I think Loretta testified that, she claimed, this happened when the baby was born on October 22, 1951, the first time. Now, then, the defendant certainly, I think—I think the jury would like to know—he should be permitted to explain where he was on that date, because, as I recall the testimony, her testimony was that it happened on the day that his wife was in the hospital.

The Court: Well, certainly, if that is true, but that wasn't the question that was being asked.

Mr. Ziegler: Well, I think that was what it was leading up to.

The Court: In other words, I have ruled here that there is no use of duplicating something that is already in evidence, but from what you say the

(Testimony of Rolland Lindsey.)

purpose of the question that is to be asked is to rebut——

Mr. Ziegler: That is right; to explain where he [324] was and his actions on that particular day.

The Court: Well, so far as it may constitute a rebuttal of the prosecution's testimony, it may be admitted, but the question whether he committed that act on that day has already been answered.

Mr. Gilmore: Yes. I won't repeat that same question.

Q. (By Mr. Gilmore): Tell us about October 22, 1951, and why it was significant to you.

A. The significance of it is that that is when my first baby was born, and I was on my annual hunting trip to Rocky Pass. We ran all that day before and got in town at 11:00 o'clock. It is about a fifteen-hour run or sixteen.

The Court: Well, just eliminate those details and tell when you got into town.

A. At the moment I got in town I found out my wife was in the hospital and I went there and I was there until 9:30 in the morning, and then I went down and had my breakfast with my mother-in-law, and I got home about noon. I had been up about thirty hours, and I slept till 6:00 o'clock, and I went back to the hospital. I was with my wife until 7:00 o'clock when they kicked me out.

Q. Do you recall whether Loretta was home or in the house at that time on that day?

A. Well, she was home at noon hour, but I don't know, I [325] don't remember, I don't recall

(Testimony of Rolland Lindsey.)

whether she was there that afternoon or whether she wasn't. I do remember that it was a school day, and I know that Bob was in school; I am sure of that.

Q. Now, October 23, 1952, does that date have any significance to you, Rollie?

A. Yes, it does.

Q. And why?

A. That is when my second baby was born.

Q. Do you recall that day? A. I do.

Q. Now, just tell us where you were and what you were doing on that day, as you recall it?

A. I was at home, and I don't remember. I just don't remember just exactly what happened except that the second baby was born.

Q. You remember it was the day your baby Janice was born. Now, February 27, 1954, Rollie, I ask you if you remember that day? A. I do.

Q. Anything significant about it?

A. The same thing. My third baby was born on that day.

Q. And where were you?

A. I was here. I was at home.

Q. In Ketchikan? [326] A. Yes.

Q. And did you go to the hospital that day to see your wife? A. I certainly did.

Q. Was Loretta home? Were you and Loretta home alone that day?

A. I just don't remember. I am not sure. I wouldn't say.

Q. Could have been?

(Testimony of Rolland Lindsey.)

A. Could have been. I don't remember. It wasn't——

Q. Do you remember whether or not——

A. It wasn't significant with me then, and it wasn't important.

Q. Now, you heard, I believe it was, Bob, Rollie, testified that on New Years Eve or New Years Day, I am not quite sure which, that you sent him away from home, that your wife was away, and that you and Loretta were together for a considerable period of time. Do you recall any such instance?

A. I don't recall it, but I could have sent him downtown. I just don't remember whether I did or whether I didn't, and, whether the wife went over to her sister-in-law's, I don't know. I don't remember that, whether she did or whether she didn't.

Q. Well, did you send him away for the purpose of being alone with Loretta?

A. I certainly did not. [327]

Q. Did you pull the shades down in the house that night?

A. I don't know. I don't remember. We usually do after dark pull the shades in our front room.

Q. Rollie, would you recognize the handwriting of Loretta? A. I sure would.

Q. You have seen it many times?

A. I have. I have helped her with her school work.

Q. I hand you this card and ask you to look at it carefully and ask you if you can identify the writing on it? A. Yes, I can.

(Testimony of Rolland Lindsey.)

Q. Whose writing is it?

A. It is Loretta's.

Mr. Munson: Your Honor, this is the same card that was objected to before on the grounds of incomprehensibility. I can't read it.

The Court: Yes. I don't see how——

Mr. Gilmore: May I approach the bench for a minute, your Honor? There is one word that I think is the ground for the incomprehensibility. I think he can explain it.

The Court: Well, you may.

Whereupon respective counsel and the court reporter approached the bench, out of the hearing of the jury, and the following occurred.

Mr. Gilmore: This little card here says in Loretta's handwriting, "No matter what happened with me and [328] Mom, I will always hate her."

The Court: I have already ruled that any hostility toward the mother is immaterial.

Mr. Gilmore: That would be my only grounds. She testified to no hostility—remember—how she loves her.

The Court: Even though it would show hostility, it is immaterial because the mother is not the defendant.

Mr. Gilmore: Except the relationship between the mother and father——

The Court: But the relation between the mother and Loretta is not in issue.

Whereupon respective counsel and the court reporter withdrew from the bench and were again

(Testimony of Rolland Lindsey.)

within hearing of the jury, and the trial proceeded as follows:

Q. (By Mr. Gilmore): Having in mind the same questions that I asked you concerning your acquaintanceship with Loretta's writing, I ask you if you recognize the writing on that card?

A. Yes, I do.

Q. And whose writing is that?

A. Loretta Lindsey's.

Mr. Gilmore: We offer this.

Mr. Munson: I would like to ask counsel, your Honor—the witness Loretta has admitted writing part of this card and denies writing other parts. I would like to have the [329] witness testify as to which part of this writing he recognizes.

Q. (By Mr. Gilmore): I ask you whether you specifically recognize the writing that is in pencil there, enclosed by that circle? A. I do.

Q. And whose writing is it?

A. Loretta's.

Q. How about the writing in pen and ink, do you recognize that writing?

A. It is Loretta Lindsey's.

Mr. Munson: Your Honor, I object to the admissibility of this card simply because it is irrelevant.

The Court: Let's see it. I don't know what it is.

Mr. Munson: Irrelevant and immaterial, and it has no date on it to indicate when it was written, the part that was written by the complaining witness, and it has no probative value whatever.

(Testimony of Rolland Lindsey.)

Mr. Gilmore: Well, we can set a time on it, I am sure.

The Court: What part of it was it that the witness Loretta Lindsey denied was her writing? Is that the part that is in ink?

A. The part that is circled in the middle.

Mr. Gilmore: The part that this witness testifies is her writing, your Honor. [330]

The Court: The objection is sustained because it has no probative value. I don't see how it could possibly prove or disprove or tend to prove or disprove anything in the case. This is not a case in which one of the principal issues is handwriting or the identity of the writer.

Mr. Gilmore: Well, of course, it wasn't introduced for that purpose, for the handwriting, but the contents of it——

The Court: Well, that is what I refer to when I say that it has no probative value. The objection is sustained.

Mr. Ziegler: Will the Court permit me just a minute? In the statement that Loretta made she said the reason she made these charges, your Honor, against Mr. Lindsey was she wanted to get away from home. Now, any evidence indicating that it was part of her plan and was in her mind, we feel is competent evidence.

The Court: Well, I don't know how it tends to prove that. I think it is utterly without any evidentiary value, and that is the ruling of the Court.

Q. (By Mr. Gilmore): Now, you testified about

(Testimony of Rolland Lindsey.)

the conditions in your home and the times and circumstances when you were there and when Loretta could have been there with you alone. You heard Loretta testify, or Bob, rather, or both of them, about one time when you were down on your boat when it was at the New England Fish Company Dock and that you sent Bob uptown, and Loretta was aboard, [331] and you threw the lines loose, started the motor up, threw the lines loose and drifted up the channel—Bob said way up the channel; do you remember any such thing?

A. I remember the time that Bob went after the window glass to the Tongass Trading Company.

Q. Was the ship tied up at New England?

A. We were tied at New England, and I was unloading fish from trolling, but I didn't go out in the middle of the channel, as she stated in the narrows, and turn my motor off and drift. She stated I went out from New England Dock and shut the motor off in the narrows. I never did that in my life.

Q. What would be the likely result with a boat of your type and size if you ran her out in the channel and let her drift, Rollie?

Mr. Munson: I object, your Honor.

The Court: That would seem to call for pure speculation or a guess.

Mr. Gilmore: Well, it is a matter of opinion, your Honor.

The Court: Well, but the jury is entitled to draw that. They are acquainted with the——

(Testimony of Rolland Lindsey.)

Mr. Gilmore: Well, he has the boat, and for fifteen or twenty years he has been plying the waters here. I don't know if they know the currents or what would likely result. [332]

Q. (By Mr. Gilmore): Well, anyway, you never at any time turned your boat loose and drifted out in this channel or any other channel; is that right?

A. The way you ask that, I can't answer it.

The Court: You better eliminate "any other channel."

Q. (By Mr. Gilmore): Well, eliminating "any other channel"; from the New England Dock, and drifted out in the channel with Loretta aboard?

A. I never went out in the channel and shut my engine off and drifted.

The Court: Were you out there with her alone? That is——

A. Yes, I have been, but not in that channel drifting.

The Court: The method of getting out in the channel or the precise location of the boat is immaterial. The only question is whether he was out there where he had an opportunity.

Mr. Gilmore: All right.

Q. (By Mr. Gilmore): Did you go out from the New England Fish Company, that day she talked about, in the channel with Loretta alone?

A. I don't remember that, but I am not sure.

Q. Now, you said that you were out on the boat one time or in the channel or sometime; tell us about that.

(Testimony of Rolland Lindsey.)

Mr. Munson: I object, your Honor, on the ground that he has gotten away from the incident.

The Court: Yes. Any other incident or time is immaterial here. It is the particular time that was testified to or the particular incident testified to by Loretta Lindsey.

Mr. Ziegler: Get him to tell the only time he was out on the channel with Loretta Lindsey and——

Mr. Munson: The same objection, your Honor.

The Court: I didn't understand what is now proposed to be asked.

Mr. Ziegler: The question is to relate the only time or times he was out on the channel or away from the dock with Loretta alone on the boat; what times they were, and what he did on those occasions; what he was doing.

The Court: Objection sustained. There is only one incident here in evidence.

Mr. Gilmore: All right.

Q. (By Mr. Gilmore): Now, let's make this perfectly clear. Did you with Loretta alone aboard the boat, with you and Loretta alone aboard the boat, throw the line off and drift out in the channel as she has——

The Court: I have already held that the method of getting out there is immaterial.

Mr. Gilmore: All right.

Q. (By Mr. Gilmore): Or were you out in the channel drifting with Loretta alone aboard the boat? [334] A. I was not.

The Court: Were you out there without drift-

(Testimony of Rolland Lindsey.)

ing, so that you were out there in the channel with her alone?

A. I have been out with her many times back and forth from Thomas Basin.

The Court: Well, as I have said before, the manner in which he got out there is immaterial. The precise location of the channel is immaterial. The only question is whether there was that opportunity.

Mr. Gilmore: That is right, but, as I understand it——

The Court: Well, you ask about throwing off the lines, which, of course, is just where we started before I ruled.

Mr. Gilmore: Well, it was for the purpose only of identifying the time, your Honor, that was the main time, at the New England Fish Company, and that incident. That was the purpose of the “lines”.

Mr. Ziegler: Now, if the Court please, I think the witness should be permitted to testify the occasions that Loretta was on this boat with him alone, the circumstances, where it was, and when it was.

The Court: I have already ruled against that. We would be here for a week if I let everything in that has been proposed to be allowed to go in. I have ruled it out. It [335] wouldn't tend to rebut anything that Loretta testified to if it related to any other incident out there in the channel.

Mr. Ziegler: Well, your Honor, isn't this witness permitted to testify——

The Court: I have already ruled, and I don't want to hear any further argument on that ruling.

(Testimony of Rolland Lindsey.)

Q. (By Mr. Gilmore): Now, Rollie, I am going to ask you whether on that occasion, that we are talking about, or at any other time on your boat, whether you ever committed any immoral act on Loretta?

Mr. Munson: I object. He has already answered that question before. He said at no time.

Mr. Gilmore: We are talking about the house.

Mr. Munson: You asked him if he had ever committed an immoral act with her, and he said no.

The Court: Well, in order to make the thing clear, it could be assumed perhaps that in his previous testimony he limited his answer to activities at the house, and now it is limited to any act of that kind on the boat, and he may answer that.

Q. (By Mr. Gilmore): Will you answer it?

A. Will you ask it again?

Q. Did you ever at any time on your boat commit any immoral act on Loretta? A. I did not.

Q. Rollie, I am going to ask you what may appear to be a personal question but it is of importance and material here. Will you tell this Court and jury whether or not you and your wife used contraceptives in the form of condoms or rubbers during your marital life?

Mr. Munson: I object, your Honor. It is immaterial.

Mr. Gilmore: It is preliminary to a question, your Honor. The next question will be very material and connect it up.

The Court: Why don't you go to that question first?

Mr. Gilmore: All right.

Q. (By Mr. Gilmore): Rollie, I will ask you

(Testimony of Rolland Lindsey.)

whether or not you found in your house, and tell us when, if you did, some rubbers sometime shortly before these charges were made by Loretta against you? A. Yes.

Mr. Munson: I object again, your Honor, on the ground of immateriality.

The Court: No. I think that, since there has been testimony here of the prosecuting witness that he used them, I think that he has a right to testify concerning the presence of any such articles in the house.

Mr. Ziegler: And particularly, your Honor, with regard to the can that Bob himself brought there, which has been testified to. [337]

Q. (By Mr. Gilmore): Will you answer that question please, Rollie?

A. You asked me if I found any, and I said, "Yes."

Q. Tell us about when it was you found them please.

A. Oh, it was about two or two and a half weeks before she ran away, both of them ran away.

Q. The last time? A. Yes.

Q. Now, tell us where you found them, Rollie.

A. I found them up in Bobby's closet in his room, and I had a bunch of outboard parts there in a pail, and I went up to get them and I took the pail out. My closet was not finished, and there was lumber and everything in there, and, when I took the pail out, well, I found this box behind, and Bob and Loretta were home at that time. I don't remem-

(Testimony of Rolland Lindsey.)

ber whether the wife was or not, but they were downstairs in the kitchen, and I went down and asked Robert where he had gotten this. He had just been in trouble with the police, and I mentioned to him and told him, "Haven't you been in enough trouble without"——

Q. Don't relate the conversation.

The Court: You are back to a conversation without having asked the witness Bob Lindsey.

Q. (By Mr. Gilmore): You did confront Bob with it?

A. I did, and he didn't answer me. [338]

Q. Now, I ask you whether or not those were your rubbers, that is, yours, your own?

A. They were not.

Q. Did you and Mrs. Lindsey as a matter of course use rubbers? A. Never.

Mr. Munson: Your Honor, I move that this entire line of testimony be stricken on the ground of its irrelevancy. I don't see where it has proved anything.

Mr. Gilmore: It is highly relevant, your Honor. There is testimony in this case that a can of rubbers was brought down by Bob and he said, "Here is the proof of the charges" against his dad.

The Court: I don't know how it could be the same can, because the question that confronts the Court now is whether you can rebut the evidence of Bob Lindsey about finding this can, this empty can, or the container for the condoms, up there on the rafters by testimony that he found one in Bob

(Testimony of Rolland Lindsey.)

Lindsey's room. That is what it is. That is the question.

Mr. Gilmore: Well, if Bob had one, had several up there, as he found, it very logically follows that the can that he brought down, that he proffered there as evidence against him, could have come from the same place.

Mr. Munson: I don't see where that follows, your Honor. I think it is—— [339]

The Court: It is very tenuous.

Mr. Ziegler: Well, if the Court please, as I recall it, the prosecuting witness herself said that he used these rubbers when he committed these various acts.

Mr. Munson: It has nothing to do with this question now.

The Court: He has already denied using anything of that kind, so the finding of a can in somebody else's room would not tend to prove or disprove what Loretta Lindsey testified.

Mr. Ziegler: As I understand the question, he was asked whether he or his wife ever used them or had them in the house. Isn't that the question?

Mr. Gilmore: That is right. He said he and his wife never used them, so it leads to a pretty logical conclusion.

Mr. Munson: Your Honor, I renew my motion. I think that the testimony is irrelevant.

The Court: I think the finding of this can in Bob's room is irrelevant, but it is immaterial also, and so it is perhaps harmless, and there is no use

(Testimony of Rolland Lindsey.)

of striking it, except that counsel will not of course be able to argue it.

Mr. Munson: Well, your Honor, it is irrelevant and immaterial, but it is also highly prejudicial. In fact, I believe the whole purpose of bringing out that testimony was [340] to——

The Court: Well, prejudicial to whom?

Mr. Munson: To the witness Robert Lindsey. It is immaterial evidence which casts an unfavorable light on him, and I think it should be stricken.

The Court: Well, I am inclined to think that that is so.

Mr. Gilmore: Except, your Honor, there is an attempted point that should be seriously considered, and that is that Bob went up to his room and brought down from his room something of the exact nature——

The Court: He didn't say he brought it down from his room.

Mr. Gilmore: From upstairs, your Honor. I beg your pardon.

The Court: Didn't he describe it as in Loretta's room?

Mr. Munson: I believe, your Honor, he said in the rafters some place between his bedroom and Loretta's room, is my recollection of it.

Mr. Gilmore: But then of course there is the other testimony of Mrs. Lindsey, who said she didn't hear him in Loretta's room, and that in all probability it could be logically concluded that he went up to his own room.

(Testimony of Rolland Lindsey.)

The Court: You mean that he would go up there and [341] find his own condoms and bring them downstairs?

Mr. Ziegler: It shows the possibility.

Mr. Gilmore: The empty can; when he said, "Here is the proof against him".

The Court: Well, I think that the connection between the two is certainly not logical, very tenuous, if anything, and in view of its effect or derogatory nature to the witness Bob Lindsey it will be excluded. It will be stricken from the record, and the jury is instructed to disregard it.

A. May I ask a question then, your Honor, on this?

The Court: No, you may not. You may ask your attorneys any question you want to.

A. I would like to ask you a question (addressing Mr. Gilmore).

Mr. Gilmore: What is it please?

The Court: Well, if you have got a question to ask him or call to his attention, you can wait until you get off the witness stand, and then tell him, and, if he thinks it is important enough, he will put you back on the witness stand.

Q. (By Mr. Gilmore): Now, Rollie, following August 25th, that was the day that Loretta made this retraction, this statement here, you remember that, you or your wife testified, I am sure, that she was around your home almost every day; is that correct? A. That is correct. [342]

Q. Now, during that entire time of the time that

(Testimony of Rolland Lindsey.)

she continued to visit your home, were you and Loretta ever home alone together?

A. Yes, we were; once.

Q. Tell us about that occasion please.

A. The wife was downtown, and Loretta came home, and there were two of the kids there; the wife had the other one with her; and we talked about the trouble that she got in with the authorities at the Wrangell Institute this summer, and that was about all of our conversation.

Q. Now, your wife was downtown and expected home. What was she downtown on, or what kind of a mission, if you remember?

A. She was down to the grocery store.

Q. And what was the entire elapsed time, the over-all time, that you and Loretta were home alone together?

A. I don't believe it was more than twenty minutes.

Q. Now, on that occasion, or on any occasion following August 25th, when she made this retraction, did you say to her, "Do you want it?"

A. I should say not.

Q. Did you ever say that to her?

A. I did not.

Q. You heard her testify, Rollie, that you said that; is that true or not true? [343]

A. I heard her say it, yes; but it isn't true though.

Q. Now, Rollie, did Loretta come back to the house and continue to come around and visit in your

(Testimony of Rolland Lindsey.)

home after the one time that you mentioned when you and Loretta were home together alone?

A. She did for two weeks longer, at least two weeks longer, if not more.

Mr. Gilmore: Take the witness.

Cross Examination

Q. (By Mr. Munson:) Mr. Lindsey, the day you went up with Loretta to the attorney's office, August 25th, do you remember that day?

A. I do, very plainly.

Q. Who told you to come up there or to bring her up there?

A. Nobody told me to bring her up there. My lawyer advised me to bring her up there.

Q. Well, who advised you to bring her up there?

A. Robert Zeigler.

Q. And when you went up there with her you remained in the room all during the time that——

A. That is right.

Q. ——that the questions and the answers were being given? A. Yes.

Q. Didn't you talk over some of these questions with Loretta? [344]

A. I didn't talk any questions over with her.

Q. You didn't say anything while you were there?

A. Oh, I did, yes; five or six times, I guess. I wouldn't even say how many, but she would ask me about a date or something like that.

Q. Well, do you remember what you said?

(Testimony of Rolland Lindsey.)

A. No, I don't.

Q. You don't remember any specific facts that you told her about or suggested to her?

A. Well, facts that I told her about would have been nothing but a date or just some small thing that she would ask me.

Q. Well, let me call your attention to some of these answers. Isn't it a fact that you suggested substantially this answer to a question: "I kind of wanted to go to my step-mother's in Seattle and I phoned her up and she didn't know what to do. I was kind of disappointed and I really don't know exactly why I said what I did about my father and that is the only reason I can think of that I did it." Didn't you suggest that answer? A. I did not.

Q. Do you recall her making that statement?

A. I don't recall it.

Q. Do you recall everything she said that day? Do you know what is in this affidavit? [345]

A. Oh, well, I know now, absolutely. I have read a copy of it.

Q. Do you have a copy of this? A. I do.

Q. Have you read it over?

A. Certainly, I have read it over. I wouldn't say that I remember any specific part of it. I don't know, if you ask me what a certain question or the answer to it was, as it is in there, I don't say that I can answer it, but I know what the gist of the statement is; I mean, what the meaning of it is, I certainly do.

(Testimony of Rolland Lindsey.)

Q. Well, what I am trying to find out, Mr. Lindsey, is how much of this statement is what you said or suggested and how much of it is what she said.

Mr. Gilmore: I object, if the Court please. He has answered that. He said in four or five instances he participated in the discussion with nothing substantive but pertaining to dates and things like that.

The Court: I think you better call his attention specifically to the statements that you think he made or suggested, otherwise it is going to be rather impossible to answer that question you ask.

Mr. Munson: Yes, your Honor. I realize that this is difficult cross examination, but I am curious to know how much of this—— [346]

Q. (By Mr. Munson:) You said you might have suggested dates or times?

A. I might have. I wouldn't even remember. If you named one, I wouldn't remember whether I had on that one or not. I had very little to do with this.

Q. Except that you brought her down in the morning and you went down with her in the afternoon when she signed this statement?

A. That is right.

Q. Being at the time her adopted father?

Mr. Gilmore: This is superfluous, if the Court please. That is in the record.

Q. (By Mr. Munson): Well, I find only two dates in the entire statement.

A. It wouldn't necessarily have to have been a date. It could be a time or place. I am not sure. I don't remember.

(Testimony of Rolland Lindsey.)

The Court: I think that the way to make this cross examination understandable is to call his attention to what you or your witnesses contend he said or suggested there.

Q. (By Mr. Munson): Well, I am trying to find a place now or a time that you might have suggested. The affidavit doesn't contain much of the information that you talked about. Now, how about this one? The witness was asked: "Have you ever asked your Dad and Mother here if you [347] could go and live with your step-mother in Seattle?" And the answer is: "Yes, and they were willing, but my step-mother didn't want me at that time."

Mr. Gilmore: What is the question?

Mr. Munson: I just read the question.

Mr. Gilmore: No. You read the question and answer there. Now what is the question?

Q. (By Mr. Munson): Did you suggest that answer? A. I did not.

The Court: Well, he asked if he suggested or told her to make that answer, so it was complete.

A. No, I didn't tell her.

Q. (By Mr. Munson): You didn't suggest that answer?

A. I did not, and I didn't tell her or whatever you want to call it.

Q. All right. Now, after this visit to the attorney's office, Mr. Ziegler, Robert Ziegler's office, a few weeks later you had a birthday dinner for Loretta, didn't you?

A. Well, I know she was up to our house on her

(Testimony of Rolland Lindsey.)

birthday, and I bought a present for her through my wife's asking me.

Q. Do you remember what you bought her?

A. Something in the drugstore; I don't know; the wife told me just what to get, and I bought it.

Q. Do you remember the birthday card you got her? A. Well, I know she had one. [348]

Q. Did you buy it? A. I bought it.

Q. Well, did you look at it? Do you remember what the card was like?

A. No, I don't remember.

Q. Well, if I were to describe it to you, would it refresh your memory?

A. I doubt it very much.

Q. You doubt it?

A. I doubt it very much.

Q. Well, I will describe it for you anyway.

Mr. Gilmore: I object to the immateriality of this line of questioning and also as to its being proper cross examination. I think this is a detail, that he has admitted, that he got her a present, and he has admitted he got her a birthday card. Now, I think that that has gone far enough on cross examination.

The Court: Well, if there is something significant about the nature of the gift, you may go into it, but otherwise it would seem immaterial.

Mr. Munson: Well, I will leave that for the moment.

Q. (By Mr. Munson): You say, on your direct testimony yesterday you said that during that

(Testimony of Rolland Lindsey.)

month, that the Judge ruled you had to limit your testimony as to hostility to, you stated that during that month that you slapped [349] Loretta once, only once?

A. At one time, at one particular instance. I think I slapped her two or three times during that time.

Q. She was out in the kitchen?

A. That is right.

Q. Now, isn't it a fact that the reason that you slapped her was because she hadn't cleaned out the bread drawer? A. No.

Q. And not because she said something to Mrs. Lindsey? A. It is not.

Q. You remember that pretty clearly?

A. I certainly do. That was just before she ran away, and I remember very clearly.

Q. You remember that quite well, don't you?

A. Well, yes. I know why I corrected her, absolutely.

Q. But you don't remember an incident that occurred just three months ago? Your memory is pretty foggy about what went on the day of this affidavit?

A. It isn't foggy. I remember what we done, but I don't remember what questions or what things that we talked about in these questions that he asked her. If she asked me a date, I don't remember what it was. There are three sheets there, and I didn't say but very, very little when that went on. Mr. Ziegler did the questioning, and she did the

(Testimony of Rolland Lindsey.)

answering, and, as I said, one or two times, or [350] four or five times—it might have been six times—she asked me about a date or a time or a place, and I answered it, and then she would think that it was that too or——

Q. Now, you said on your direct that you were in a logging camp or some camp outside of town——

A. I didn't get the first part of that. I am sorry.

Q. You said on your direct testimony that you were in a logging camp after you heard that Loretta made these charges against you?

A. I went back out to my camp; yes.

Q. And then, as I remember your testimony, you came back? A. I did.

Q. Now, what time did you come back, what time of the day?

A. Well, I believe that is after I knew about this that you are speaking of.

Mr. Ziegler: Talk a little louder, Rollie.

A. It was after I knew about this that you are speaking of, the time. The next time I came to town was after that.

Q. (By Mr. Munson): Well, how about the first time?

A. The first time when I came in?

Q. Following the first time.

Mr. Gilmore: If the Court please, my only objection is—"what", "how about it", "how about what"—the question is vague and unspecific and unintelligible.

The Court: If it is unintelligible, he can say so.

(Testimony of Rolland Lindsey.)

I think that the question can be understood as being as to when he got into town the first time after the complaint was made.

A. Oh, yes. I got in, oh, around 11:00 o'clock, 11:30, 12:00 o'clock.

Q. (By Mr. Munson): Fairly late that evening?

A. Yes.

Q. Was that the evening that you found out that these charges had been made?

A. That is right.

Q. And when did you find out?

A. Oh, it was 2:00 or 2:30 in the morning, after we went to bed. My wife didn't tell me before.

Q. You said that your wife didn't tell you until 2:00 a.m. that night?

A. 2:00 or later. It might have been 2:30; I am not sure.

Q. And you came back about 11:00?

A. Yes.

Q. Nothing was said about this when you came home?

A. I asked her where the kids was, and she said they had left home again, and I said, "Why?" And she wouldn't tell me, and afterwards I asked her why she hadn't told me, and she said because there were two boys—they are actually young, grown men—were in the house and——

Q. Mr. Lindsey, I am not asking you for all these details. [352]

A. Well, you asked me why, and I told you.

Q. What I want to know is whether anything

(Testimony of Rolland Lindsey.)

was said when you came home, and you said, "No." That was the answer?

A. What do you mean by "was anything said"? That could be anything.

Q. I mean about the charges now——

Mr. Ziegler: He just started to tell about it, your Honor, and answer the question, what was said.

The Court: It was not responsive to the question as to what was said about the charges.

Q. (By Mr. Munson): You say that your wife told you that the kids ran away or went away when you noticed they weren't there that trip?

A. Well, she said they ran away or went away, and she might not have even that, but she did tell me——

Q. Well, didn't you hear Mrs. R. D. Pawsey——

A. You didn't let me answer the question. You asked me one.

Q. You answered all I wanted to hear. Didn't you hear Mrs. R. D. Pawsey say that she came up to the house and got Loretta and brought her back to her house?

Mr. Gilmore: That isn't the testimony, if the Court please. It is that Mrs. Pawsey brought Loretta down to the Lindsey home.

Mr. Munson: The testimony is that Mrs. R. D. Pawsey came up to the Lindsey home and took Loretta back with her to [353] live with her.

Mr. Gilmore: That is absolutely a misstatement. It is absolutely wrong.

The Court: Well, the jury will have to rely on

(Testimony of Rolland Lindsey.)

its own memory. If they think it is sufficiently important, they can have it read.

Mr. Gilmore: Absolutely.

The Court: Go ahead.

Mr. Ziegler: What difference does it make?

A. Well, if it isn't the right——

Q. (By Mr. Munson): And didn't you say that the second time you came back from the logging camp that Loretta and Mrs. Pawsey were over in Metlakatla? A. I did not.

Q. On your direct examination?

A. No, sir. If I did, it wasn't meant that way at all.

Q. I have it in my notes that way.

A. They were in Metlakatla the first time.

Q. Oh, was it the first time when you came back?

A. It was the next day. When we got up, we found out that she was gone.

Q. And you knew she was with Mrs. Pawsey, and you knew she hadn't run away?

A. Any time the girl leaves her home and goes anywhere, she is running away if she says she is not coming back. [354]

Q. Oh, is that what you call running away—any time she leaves and stays with a relative, with her grandmother?

A. Well, in the manner that my wife told me this, absolutely.

Q. Didn't your wife tell you that the grandmother had come up and got Loretta?

(Testimony of Rolland Lindsey.)

A. No. She said she brought Loretta up with her.

Mr. Gilmore: I submit to the Court that that is not the testimony in the case. The child came home that afternoon—didn't come home. Remember? Mrs. Lindsey testified it was getting late, late, late in the day, and she didn't come home.

The Court: Well, I don't know what the testimony is. There are so many immaterial details in here now that I don't know how anybody could remember, so that——

Mr. Gilmore: It is so clear in my mind.

The Court: ——counsel will have to use his own recollection in good faith, and I assume that is what he is doing.

Mr. Gilmore: I wouldn't submit it if there were any doubt.

Mr. Munson: Well, your Honor, there is no doubt in my mind as to what the witness said.

Mr. Gilmore: Fine. We stand on the record.

Q. (By Mr. Munson): Now, after the affidavit, or the statement—it is not an affidavit really—after this statement [355] was all signed, a copy given to the Marshal, you thought that was the end of it; is that right?

Mr. Gilmore: I object on the ground that it would be immaterial, if the Court please,——

The Court: It is cross examination on his motive.

Mr. Gilmore: ——as to what he thought.

The Court: It is cross examination. Objection overruled.

(Testimony of Rolland Lindsey.)

A. I had no idea what it was. I am not a lawyer.

Q. (By Mr. Munson): Oh, you didn't know what it was?

A. I had no idea. I did not. I thought that that would be the end of it because she came home and——

Q. Well, didn't you tell several people in the neighborhood that it was all over?

The Court: He just go through saying he thought it would be the end of it.

Mr. Munson: Oh.

A. I am not a lawyer, as I said.

Q. (By Mr. Munson): Well, after that, on this afternoon that you testified to when Mr. Gilmore was examining you about the time you were alone with Loretta, didn't you tell her then, that afternoon, that you couldn't leave her alone?

A. You mean the same day as this was made out?

Q. No. This is afterwards; the day that you told Mr. Gilmore that you were alone in the house with Loretta? [356]

A. And didn't I then what?

Q. Didn't you tell Loretta that you didn't think you would be able to leave her alone?

A. I certainly did not.

Mr. Gilmore: Speak up a little louder so the jurors at the end of the box can hear.

A. I did not.

Q. (By Mr. Munson): Did you search Loretta's room after she left your house last April?

(Testimony of Rolland Lindsey.)

A. Not until the other part of the family had searched it.

Q. You mean you got in on the searching part of it rather late; but you made a search?

A. After they had searched it, I did.

Q. Did you find anything? A. I did not.

Q. Did you destroy those cotton balls that you heard testified about?

A. I never found any to destroy.

Q. Now, when you were taking this witness down to Mr. Ziegler's office, on the way down during the five or ten-minute walk, did you or did not say to Loretta substantially these words: "Well, I sure thought you liked it. I was real mad when I found out what you had said."

A. That sounds like Loretta's talking. I never said anything like that. [357]

Q. You didn't say anything like that?

A. No, I didn't. It just sounds like the way she would say things, or says things, rather.

Q. Now, you testified on direct about an incident that occurred on New Years Day of this year, 1954 New Years, and, as I recall your direct testimony, you don't recall much about that day?

A. No; it wasn't important.

Q. Well, do you remember that you had a fight with your wife that day? A. No.

Q. An argument and——

A. What do you mean by a fight?

Q. I mean an argument?

(Testimony of Rolland Lindsey.)

A. I have never had a fight with my wife in my life.

The Court: Well, he is talking about argument now, so let's——

A. First he asked me if I had had a fight with her, and I never have. I have never touched my wife in my life.

Q. I clarified my question. An argument with your wife?

A. We might have had a disagreement. I don't know. I don't remember.

Q. All right. Call it a disagreement then. Did you have a disagreement with her?

A. I don't remember. I couldn't answer something that I [358] don't remember.

Q. In other words, you could have had a disagreement?

A. We could have had one, or we could not have had. I don't know.

Q. And she could have packed up the kids and gone some place else? She could have gone to see her cousin or sister or mother?

A. She could have went over there. I don't say that she didn't even. She didn't have to go because we had an argument. She could have went over there to visit them.

Q. And, after she was gone, isn't it a fact that you were there with Loretta and Robert and you told Robert to go out and play?

A. You can ask me all the questions on New Years Day that you want to, and I do not recall

(Testimony of Rolland Lindsey.)

any of them. Whether he went downtown, whether he was outside playing, whether I was home with her alone, whether my wife was there, or any part of it, it isn't significant to me at the time, and I don't remember it, so your questions will all be the same, and you are wasting the Court's time.

The Court: It is for the Court to determine whether its time is being wasted here, not you.

A. Ask me again.

Q. In other words, that day is just a sort of a big blank in your mind? [359]

A. Not any more so than any other day that I would pick during the year. Maybe there are some of them that are significant, but that one isn't.

Q. That day, New Years Day, just isn't significant?

A. Just wasn't significant. I haven't said that I was there alone with her or that I wasn't. I could have been. I won't say that I wasn't because I don't remember.

Whereupon Court recessed for five minutes, reconvening as per recess, with all parties present as heretofore and the jury all present in the box; the defendant Rolland Lindsey resumed the witness stand, and the Cross Examination by Mr. Munson was continued as follows:

Q. Now, Mr. Lindsey, you said that when this affidavit, this statement, was being made——

A. Would you stand back a little farther please?

Q. ——up in Mr. Ziegler's office, that you suggested dates, names, times and places?

(Testimony of Rolland Lindsey.)

Mr. Ziegler: Now, if the Court please, I don't think that is a fair question. I don't think he stated he suggested anything. His testimony was that——

The Court: Well, if he did, it was times or dates or places or something of that kind.

Mr. Ziegler: He said it might have been asked, but he didn't say he suggested it.

Mr. Munson: He said he might have supplied them. [360]

Mr. Ziegler: But after being asked.

The Court: That is my recollection, that he testified that he might have——

Mr. Ziegler: After he was asked, but not the form of that question that he suggested it.

Mr. Munson: He didn't make any statement like that.

Q. (By Mr. Munson): You said that you made about five or six?

A. I don't remember how many it was.

Q. I just want to go through this affidavit with you. Did you suggest to Loretta that she was "fourteen years old"? A. No.

Q. That she was "in the 8th grade at school"?

A. No, I did not.

Q. That the charges were filed against you "about five months ago"?

A. I don't remember if I did or I didn't. I don't recollect.

Q. That she was "in the hospital" at the time of the preliminary hearing?

(Testimony of Rolland Lindsey.)

A. I don't know whether I did or not. I don't remember.

Q. That her step-mother lives in Seattle?

A. I don't know. I don't know which one of those questions she asked me so I can't answer you on them at all.

Q. That she left Wrangell August 22nd or 23rd?

A. I don't know.

Q. That she was in Wrangell? [361]

A. I don't know.

Q. That the Lindsey home is on Woodland, or that her name is Lindsey? Those are the only dates, names, places, that I can see in there. Would you tell me what you did suggest to her?

A. I didn't suggest anything to her.

Mr. Ziegler: If the Court please, I object to that again, the inference that he suggested anything to her. That wasn't his testimony as I recall it. He never stated he suggested anything to her.

Mr. Munson: He said he supplied it.

Mr. Ziegler: The gist of his testimony was that it may have been discussed.

The Court: He did testify to suggesting or possibly suggesting one or more matters, but in view of the fact that he also has testified that he doesn't remember them, of course, counsel is permitted to ask him specific questions.

Mr. Ziegler: As long as he don't put it in the form of a suggestion coming from him, I have no objection to it.

(Testimony of Rolland Lindsey.)

The Court: On cross examination you could ask a witness, "Didn't you say" so and so.

Mr. Ziegler: That is all right. I don't object to that.

The Court: Well, that is all he is doing. [362]

Q. (By Mr. Munson): Would you tell the jury and the Court what names or dates or places you discussed or supplied? A. I don't remember if I did.

Q. It would be useless to look at this; is that the idea?

A. As far as me suggesting anything to her on that, yes. If she did ask me a question, I don't remember what it was.

Q. Now, you stated on direct examination that after this time that you were alone, after this date of the affidavit, you were alone with Loretta for, you said, twenty minutes, I believe?

A. Approximately.

Q. Approximately twenty minutes. That after that time, in which you denied having made any advances, sexual advances, upon her, and after that time she continued to come to the house, were you ever alone with her again?

A. Not that I remember.

Q. She came to the house to see the kids; isn't that it?

A. She came to the house to see us all, from her actions, the way she—I mean to say that was the impression that anyone would get. If I was downtown, she would run up the street to see me, and that was after this time that she claims that I said this to her.

(Testimony of Rolland Lindsey.)

Q. And you say you never were alone with her again?

A. I am not sure but I don't believe that I was. I don't recollect. [363]

Q. Well, you said that you were never alone with her after that date.

A. That is the only time that I can remember that she was ever in the house alone with me.

Q. Now, as I recollect, when—you said that when you came back from some of your trips, or did you say, when you came back home, there was always a big fight, a family fight?

A. That was after trips, that is, after I had been gone away from home for a few days.

Q. Well, who were the fights with? With your wife?

A. They would be between the wife and the children.

Q. Well, you just said a few minutes ago that you had never had a fight with your wife.

A. I didn't say that I had now. I told you that the trouble was between the children and the wife, and there was always a big squabble when I came home about it. They met me at the door usually, the two kids, and started telling me their troubles.

Q. Well, I just wanted to—I remembered you saying that you came home and there was always a big fight. I just wondered what you meant by it.

A. I meant by that that there has always been trouble between the wife and the children because of their actions, the older children. [364]

(Testimony of Rolland Lindsey.)

Q. Who did you stick up for, the kids or——

Mr. Ziegler: Now, if the Court please, I don't think it is cross examination or material.

The Court: Well, I don't think it is material.

Q. (By Mr. Munson): Now, during this month prior—I have already asked you part of this; I want to clarify it again—during this month prior to the time the charges were brought against you, you said that you had only one occasion to slap Loretta and that was that kitchen incident?

A. Yes, I think so.

Q. Do you remember when that was?

A. Well, it was the week end before I went out that they ran away. In other words, we knew nothing about them. I didn't know anything about them running away. It was just the week end before that the kids run away when I was in, and I believe I was out for ten days at a time, ten days to two weeks, at the camp.

Q. Well, it was about two weeks before; is that it?

A. Well, approximately; I can't tell you just to the day.

Q. But that was the only time that you used violence on her during that period?

A. That is right.

Q. Now, on this New Years Day that you can't remember, isn't it a fact that you committed an act of sodomy on [365] Loretta?

A. I didn't; no, sir.

Q. Isn't it the fact?

A. It is not.

(Testimony of Rolland Lindsey.)

Q. New Years Day 1954? A. No, sir.

Q. After you sent Robert down to the store?

A. I don't know if I sent him to the store.

Q. And pulled the shades down?

A. I am not sure of any of that. I don't remember.

Q. You mean you are not sure whether you committed an act of sodomy on her that day?

A. I certainly am sure that I did not.

Q. Now, you said on October 22, 1951, that all you remember about that day is the fact that the baby was born and you got into town from a hunting trip and went up to the hospital, and then you state that——

A. Well, that isn't all I said, but that is part of it.

Q. That you slept from noon until 6:00 p.m. that day? A. That is right.

Q. Now, do you recall that that period of time encompasses the time when the complaining witness said that you had committed an act of sodomy and had intercourse with her?

A. That is right; I remember that, that she said that.

Q. You remember that she said it was around 1:30 in the [366] afternoon?

A. I don't remember what time she said, but I know she said that.

Q. Now, isn't it a fact that you told her to stay home from school that afternoon?

A. I don't remember.

(Testimony of Rolland Lindsey.)

Q. To wash the clothes?

A. I don't know whether she was home. I stated that already. I don't know whether she was home that day.

Q. Well, you said she was home at the noon hour?

A. She was. Both of them were.

Q. I am asking you, didn't you tell her at that time to stay home and wash the clothes?

A. I don't remember about that.

Q. And shortly after, about 1:15 or 1:30, you asked her to go into the bedroom with you and when you were in there you had intercourse with her and committed an act of sodomy upon her? Now, isn't that the truth?

A. That is not the truth.

Q. Now, October 23, 1952, you don't remember anything about that day except the fact that the second baby was born?

A. I was at home. I didn't go on a hunting trip that year, so I just don't recollect except that the baby was born at that time. I was in town for a number of days before and a number of days after.

Q. You remember that you were in town?

A. I was home every time one of my babies were born.

Q. And then, February 27th, you don't remember much about that day; that was this year; but you don't remember much about that?

A. I remember that my babies were born, but it wasn't significant, anything else wasn't significant to me at that time.

(Testimony of Rolland Lindsey.)

Q. Is that the night Bob and Loretta were up at Florence Dalton's house when you came in?

A. I don't remember.

Q. And you called up and asked Florence to send them home the following morning?

A. I could have. I just don't remember.

Q. You just don't know?

A. I don't remember.

Q. You brought out some personal information on your direct testimony about the fact that you and your wife didn't use contraceptives, rubber sheaths. Now, isn't it a fact that you wanted children by Victoria?

A. We wanted the first two, but we weren't anxious to have the third one.

Q. And isn't it a fact that a pregnancy of Loretta would have been disastrous to you because of the things that you were doing to her? [368]

A. That has never entered my mind.

Mr. Ziegler: Just a moment. We object to that as a very highly prejudicial question and improper cross examination.

The Court: I think it is perfectly proper cross examination in view of the testimony. Objection is overruled.

Mr. Ziegler: What was the question? Do you understand the question, Mr. Lindsey?

A. I did; I believe I did.

Mr. Ziegler: Did you answer it?

A. I said it never entered my mind.

Mr. Munson: He understood it.

(Testimony of Rolland Lindsey.)

Q. (By Mr. Munson): Mr. Lindsey, do you recall, after this affidavit or statement was signed, you were with Loretta and your wife and Loretta's grandmother and you were discussing the fact that the charges were dropped in this case, and Loretta brought up the point, "What about the medical examination I have had," and you knew she had a medical examination, didn't you?

A. Yes; I knew that.

Q. And you knew that the medical examination showed that she was definitely not a virgin?

A. I knew that.

Q. You knew that? A. Yes; I knew it.

Q. And she brought that up and reminded you of it. Didn't you tell her in front of those people on that occasion, "If anyone asks you about that, tell them you stuck a banana up you"?

A. I don't remember her asking anything of that nature, and I never told her any such thing.

Q. You just don't recall?

A. I know I never told her any such thing, and I don't remember her saying anything. I am sure that that kind of a subject never came up at home.

Q. You testified on direct examination that after you heard about these charges that you went back to your logging camp? A. That is right.

Q. And that you didn't think much about it?

A. I didn't. I thought about them, but then these kids had run away many, many times and accused their mother——

Q. Well, are you suggesting that because a child

(Testimony of Rolland Lindsey.)

runs away once or twice or three times that they are going to make up a complete set of facts showing sodomy over a sustained period of time, Mr. Lindsey; are you suggesting that?

A. I am not a doctor. I can't answer those questions.

Q. You think a doctor could answer that?

A. There is something wrong with Loretta, is what I think.

Q. Oh, you think there is something wrong with Loretta? [370]

A. I certainly do, mentally; I certainly do.

Q. You think Loretta is mentally off?

A. I certainly do.

Q. Has it occurred to you that you might be mentally off? Don't you think the testimony would show that? A. I do not.

Q. You were calm; you didn't think anything about it; you went to your logging camp assured that nothing would come of it?

A. If you think I was calm, you are off your beam because I was——

Mr. Ziegler: A little louder, Mr. Lindsey.

A. If he thinks I was calm after being accused of such a thing as this, he is badly mistaken.

Q. (By Mr. Munson): Well, didn't you tell your attorney that you were calm?

A. I don't remember any such a statement that I remember of.

Q. I certainly recall your saying that you were calm and you didn't think much about it.

(Testimony of Rolland Lindsey.)

A. I said I had a boom that I had to go out there and get regardless, and that these kids had caused us trouble before, and that I felt that it would be taken care of when I got in and I got with them and got the family so that we could talk it over.

Q. In other words, you weren't calm? You were rather [371] rattled by these charges?

A. I wasn't rattled by them whatsoever, but I felt terrible about them; I will tell you that.

Q. You felt ashamed?

A. I didn't feel ashamed at anything. I have nothing to be ashamed of.

Q. You have nothing to be ashamed of?

A. I do not.

Q. Have you ever heard of a psychopathic personality, Mr. Lindsey?

Mr. Gilmore: I object, if the Court please, as immaterial.

A. I don't even understand the word.

The Court: Objection overruled.

Q. (By Mr. Munson): A psychopathic personality is a person who doesn't care, who has nothing to be ashamed of, no matter what he does.

Mr. Ziegler: That isn't my understanding of its definition, and I think, your Honor, we are getting into the field of science here that perhaps—I know I don't know too much about it, and maybe Mr. Munson is an expert on it, but certainly this witness isn't.

The Court: There is nothing wrong about an

(Testimony of Rolland Lindsey.)

examination in which the witness is asked his own opinion about himself, his mentality. Objection is overruled. [372]

Mr. Ziegler: Well, I know, but that is all right; I don't object to that; but using medical terms without first determining whether the witness knows what the term is——

The Court: Well, as far as cross examination is concerned, it wouldn't make any difference whether he misused the term or whether it was incorrect. It is cross examination.

Mr. Ziegler: Except that it is misleading to the witness.

Q. (By Mr. Munson): What are you laughing at? A. Who is laughing?

Q. You were. Do you think this is funny?

Mr. Gilmore: I object, if the Court please.

The Court: Objection overruled.

Q. (By Mr. Munson): Well, as I understood your direct testimony, Mr. Lindsey, the only occasion in that month's period of time prior to the filing of this complaint, which initiated this action against you, the only time that you had a run-in or a squabble with Loretta was over that kitchen episode when you slapped her?

A. It wasn't a run-in or squabble. I corrected her.

Q. You did what a father would do to a child?

A. I did.

Q. And that is the only act of discipline, act of

(Testimony of Rolland Lindsey.)

violence, that you used upon her during that period of time?

A. You mean by slapping her or something of that nature? [373] That is right, as far as I remember. I wouldn't swear to that now, but that is the only thing that I can recall, the only time that I slapped her, because in three years it had been very, very seldom that I ever slapped Loretta.

Q. You didn't make it a practice of slapping her?

A. I did not. I hadn't spanked her since she was—I don't know how many years. I hadn't spanked her for a long, long time.

Q. In other words, you were a pretty indulgent father to her?

A. I don't understand your meaning of that.

Q. You were indulgent. You weren't cruel to her?

A. I certainly wasn't.

Q. And she would have no reason to feel hostile toward you then, would she?

A. Oh, from the corrections; but I was talking about the slapping and so forth; but there were restrictions and things of that nature.

Mr. Munson: No further cross examination.

The Court: How old are you?

A. Forty-one.

Mr. Gilmore: That is all. No redirect. You may be excused from the stand.

(Witness excused.)

Mr. Gilmore: If the Court please, I have a request, but first I would like to read to the jury—

it hasn't yet been [374] read to them—Defendant's Exhibit No. B, about which considerable testimony has been adduced from the stand about this statement. This is Defendant's Exhibit No. B, the statement which has been testified to here in the last two or three days. It reads:

“The following statements were made by Loretta Lindsey in response to questions put to her by Robert H. Ziegler, Sr., at 10:15 A.M.,” and that of course is the same Robert Ziegler that testified to it yesterday, “at 10:15 A.M. on August 25, 1954, in the offices of Ziegler, Ziegler & Cloudy, attorneys for Rollie Lindsey, defendant in the case of the United States of America -vs- Rollie Lindsey. Those present at said time and place were Loretta Lindsey, Rollie Lindsey, Robert H. Ziegler, Sr., and Ruth Francis, Secretary.

Q. Please state your full name and age.

A. Loretta Lindsey. I am 14 years old and in the 8th grade at school.

Q. Do you consider Mr. Lindsey your father?

A. Yes.

Q. Why are you here this morning?

A. So that I can drop this charge against him which isn't true.

Q. Are you here of your own free will?

A. Yes.

Q. This is purely voluntary then? [375]

A. Yes. I went home this morning for the first time in months and told my father that I was now prepared to tell the truth.

Q. Has anyone threatened you or tried to force you to come here and do this? A. No.

Q. When did you prefer charges against your father?

A. I don't know exactly, but it was about five months ago.

Q. What did you charge him with having done?

A. Well—according to what I told “them” he was charged with rape, sodomy and contributing to the delinquency of a minor.

Q. Did you testify to that at the preliminary hearing? A. Yes, I did.

Q. Did anyone else you know appear to testify against him?

A. I don't know. I said what I had to say and then I left. I signed the complaint.

Q. Who went with you?

A. Reverend Grissett brought me up there and Mr. Davidson.

Q. At the time this preliminary hearing took place Loretta, were you living at the Lindsey home?

A. No, I wasn't. I was in the hospital. I had run away from home.

Q. Loretta—why did you and your brother run away?

A. I kind of wanted to go to my step-mother's in Seattle and [376] I phoned her up and she didn't know what to do. I was kind of disappointed and I really don't know exactly why I said what I did about my father and that is the only reason I can think of that I did it.

Q. You mean then that by saying what you did

you thought you would be able to go to live with your step-mother? A. Yes.

Q. Then you made this whole thing up "out of the whole cloth"? A. Yes.

Q. You mean that this is nothing but a figment of your imagination? A. Yes.

Q. Did you realize Loretta, when you testified to all these charges in the Commissioner's Court at the preliminary hearing, that you were under oath to tell the truth?

A. I knew I was under oath but that didn't mean anything to me then. But when I was up in Wrangell, Jack (Krepps), the Marshal up in Wrangell told me what it meant when you lie under oath. I believe he had an idea I had been lying. Last Sunday and Monday (August 22nd and 23rd) I told him I was lying. When we talked about it, he didn't want Mrs. Krepps to be there as she didn't know anything about this, and he didn't want her to hear what I said as they were friends and I had stayed with them [377] in Wrangell one time.

Q. Why are you making these statements now, Loretta?

A. I want to go back to my family and I don't want the little Lindsey kids to have their Dad taken away from them for something he didn't do.

Q. You realize you have done a pretty serious thing to Rollie? A. Yes, I know.

Q. Did you name specific instances and dates at the hearing? A. Yes, I did.

Q. Where were they supposed to have taken place?

A. At our home on Woodland Avenue, when Mrs. Lindsey was having children. They were the only dates when I knew he was home as he is gone a lot of the time.

Q. That is the reason you named those specific dates then, because you knew if the authorities checked they would find out that he was at home at those times? A. Yes.

Q. You must have hated him pretty badly to have made such charges.

A. I thought I did, but I was wrong.

Q. What would you like me to do about this?

A. I would like to have these charges dropped. I believe the U.S. Attorney has already dropped the case as Mr. Krepps called him up and asked him to. [378]

Q. You know I intend to send a copy of your statement to the District Attorney immediately, because if what you say now is true, and I presume it is, the charges you made previously are very serious and you have just about destroyed your Dad's reputation in the Community?

A. Yes, I know.

Q. I am going to have you sign this statement, under oath, and it will in effect result in your stating, under oath, that you lied previously, under oath. Can you think of anything else you would like to tell me, Loretta? A. No.

Q. Have you ever asked your Dad and Mother here if you could go and live with your step-mother in Seattle?

A. Yes, and they were willing, but my step-mother didn't want me at that time.

Q. Where did you get the idea to do this, Loretta?

A. I don't know. I read a lot of mystery stories and I guess that is where I got the idea.

Q. You are familiar with the word "frame" then and that is what you thought you would do to your Dad?

A. Um humm.

Q. Who was the first person you went to with this story?

A. I don't know.

Q. You had the idea after you left the Lindsey home?

A. No, before I left. [379]

Q. Where did you go when you left?

A. To my grandmother's.

Q. And then you put the idea into effect?

A. Yes.

Q. If you were already out of Rollie's home, why did you have to use this method?

A. It would have been pretty hard to go to the States—to get out of town.

Q. When you finally decided to put the plan into operation, who did you go to see?

A. Well—the Don Riewalds knew. I told them I wouldn't be baby-sitting for them anymore and he asked me why and I said my folks were kind of mean to me and he said I wasn't telling them all, and so I did and I don't know whether he believed me or not but he said to go see the City Magistrate and that is where I went.

Q. Then you lied to him—you lied to the Magis-

trate—you lied to the Marshal—and you lied to the U.S. Attorney? A. Yes.”

Signed, “Loretta Lindsey. Subscribed and sworn to before me this 25th day of August, 1954, at Ketchikan, Alaska. Robert H. Ziegler, Notary Public for Alaska.”

Mr. Munson: Your Honor, I request the Court to instruct the jury that on the basis of the testimony adduced that this statement is not a verbatim transcript of the meeting [380] that was held at that time and place contained therein.

The Court: Well, I think that that is understood. There isn't anything here that shows or pretends to show that it is verbatim.

Mr. Gilmore: Now, if the Court please, as I indicated——

Mr. Munson: Your Honor, before counsel goes on, I would like to have permission to recall the defendant for one question.

The Court: What were you going on to?

Mr. Gilmore: Well, I was going to ask leave of the Court to recall Loretta Lindsey for a question on one subject matter. However, we have a witness in the courtroom now, and this of course will expedite the trial, who is a physician and surgeon and who has come down from the hospital out of surgery, and we would be glad and willing to call him out of turn at this time.

The Court: It all depends on which will conduce the most to the convenience of the parties, as to whom you call.

Mr. Gilmore: Well, we would like to call Doctor Salazar then please. [381]

LOUIS SALAZAR

called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Gilmore): Will you state your name please? A. Louis Salazar.

Q. Will you state your business, occupation or profession? A. Physician and surgeon.

Q. And are you a duly qualified, licensed, practicing physician and surgeon in the Territory of Alaska? A. Yes, sir.

Mr. Munson: We will concede his qualifications.

Mr. Gilmore: Thank you, counsel.

Q. (By Mr. Gilmore): Now, Doctor Salazar, you just heard counsel acknowledge, admit, your qualifications as a physician and surgeon, and I would like to state to you that there has been testimony in this trial of a broken hymen on a young woman, a girl, and I would like to ask you your opinion as to whether or not such a condition, that is, a broken hymen, necessarily indicates that a woman has had sexual intercourse?

Mr. Munson: I object, your Honor.

The Court: Well, objection sustained. It doesn't take all the facts that are in evidence here upon which the opinion of Doctor Stagg was based.

Q. (By Mr. Gilmore): Well, now Doctor, I will

(Testimony of Louis Salazar.)

ask you this question. Could a broken hymen be caused by things other than sexual intercourse?

Mr. Munson: I object, your Honor.

The Court: Objection sustained.

Q. (By Mr. Gilmore): Doctor, I will ask you this question. Is it or is it not true that there is such a thing as a rudimentary hymen?

A. That is correct.

Q. And would you explain to the Court and the jury what is meant by that?

Mr. Munson: I object to that, your Honor.

The Court: Objection sustained. It is immaterial.

Mr. Gilmore: That is all the questions.

The Court: I assume there is no cross examination.

Mr. Munson: Yes, there is, your Honor.

The Court: Well, he hasn't testified to anything.

Mr. Munson: I realize it is a peculiar situation.

The Court: I just can't see how you could ask him a question that would be cross examination.

Mr. Munson: I was just going to take advantage of the fact that he was there.

Mr. Ziegler: We have no objection to that, if the Court please.

Mr. Gilmore: If you think you can take advantage of [383] something.

Cross Examination

Q. (By Mr. Munson): Doctor Salazar, if you were advised of this set of facts—if you examined a

(Testimony of Louis Salazar.)

young girl, fourteen years old, and you felt no resistance on inserting two fingers into the vagina, no resistance from the hymenal ring, and the muscles—the perineal muscles, is it?

A. Perineal muscles.

Q. —and the perineal muscles were lax, and the inside vaginal walls were completely relaxed, and that you could insert your largest speculum into the vaginal cavity with ease, and that on inserting two fingers into the area where the hymenal ring would be that no pain was felt or resistance, what would your opinion be of that?

A. Well, of course——

The Court: That is too indefinite.

A. —you go into a great deal of detail——

The Court: It would have to relate to something.

Mr. Munson: Well, I thought I had enough facts here to ask a hypothetical question, your Honor. If I haven't——

The Court: Well, but the opinion should be as to whether or not she had had intercourse for some period of time. [384]

Mr. Munson: Oh, excuse me, your Honor.

Q. (By Mr. Munson): What would your opinion be about that woman's sexual intercourse pattern?

A. Well, that is quite an indefinite question which can be related to many different items.

Q. Well, would you say that that would be a woman who had had a lot of sexual intercourse?

The Court: Would it be the normal condition

(Testimony of Louis Salazar.)

of a woman who has had a lot of intercourse—would be the question.

A. Of course, you would have to provide that it is in existence to begin with.

Q. Well, you have to assume those facts.

Mr. Munson: I think we will just forget about it, your Honor, and excuse the witness.

Mr. Gilmore: Thank you, Doctor.

(Witness excused.)

Mr. Gilmore: Now, if the Court please, I was about to say that, I indicated an hour or so ago, that there was through inadvertence an oversight in not asking a specific question of Loretta, and with leave of the Court I would like to call her back just to question her on one specific instance, unless counsel, as he indicated, remember, he indicated to the Court that he may be calling her back. If he does, we will gladly wait for that.

The Court: Well, I assume that you will call her [385] in rebuttal, will you not?

Mr. Munson: Well, I don't know whether I will or not, your Honor. I think I will.

The Court: Well, if you don't call her on rebuttal—then you can renew your application.

Mr. Gilmore: Thank you, your Honor.

ORVILLE C. JOHNSON

called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

(Testimony of Orville C. Johnson.)

Direct Examination

Q. (By Mr. Gilmore): Will you state your name please, sir?

A. Orville C. Johnson.

Q. And where do you reside?

A. 1427-A Millar Street, Ketchikan, Alaska.

Q. And what is your business, profession or occupation?

A. I am in the bar business here in Ketchikan.

Q. You are the owner of a bar?

A. Part owner, sir.

Q. Part owner. How long have you lived in Ketchikan, Mr. Johnson?

A. Since 1938.

Q. Continuously?

A. Except for my time in the Service.

Q. Now, do you know Loretta Lindsey? [386]

A. Yes, I know her.

Q. And how long have you known her, approximately?

A. Oh, I have known of her since approximately 1946 and have had her as a baby sitter after we came back from Annette Island; that was in 1949; shortly thereafter.

Q. On several occasions?

A. That is correct.

Q. And you feel that you know her quite well, do you?

A. Well, I know her well enough to have hired her and had confidence in her at the time.

(Testimony of Orville C. Johnson.)

Q. Now, are you acquainted with her general reputation in this community for truth and veracity? A. Yes.

The Court: It has got to be limited to the proper time.

Mr. Gilmore: What, your Honor?

The Court: It has got to be limited to the proper period.

Mr. Gilmore: And is that the thirty-day limitation?

The Court: No. That is the period before the, a reasonable period before the, filing of the charges.

Q. (By Mr. Gilmore): Well, were you acquainted with her general reputation in this community for truth and veracity before the time of—I am trying to think of the date of the complaint, which was April 24th? [387]

A. Yes, I was.

Q. Prior to that time. Now, what is that reputation in this community?

A. Well, the conversations I have——

The Court: He can answer that only yes or not, but you haven't asked him yet the proper question. The proper question is—what is that reputation, good or bad? A. It is bad, sir.

Q. (By Mr. Gilmore): Would you believe her under oath? A. No, I would not.

The Court: It is not what he would do. It has got to be general reputation.

Mr. Gilmore: Yes; that is true.

The Court: The last answer is stricken.

(Testimony of Orville C. Johnson.)

A. Well, it is general reputation that she does not tell the truth, sir.

Mr. Gilmore: And, of course, your Honor, we do have authorities for the last question following the general reputation question.

The Court: That is calling for a personal opinion of the witness, and I have got to rule it out.

Mr. Gilmore: Take the witness.

Cross Examination

Q. (By Mr. Munson): Mr. Johnson, you say you employed Loretta as a baby sitter? [388]

A. That is correct, sir.

Q. Where do you live?

A. At that time I lived at 927 Deermount Avenue.

Q. Deermount?

A. That is correct. I have since sold the home.

Q. When did you sell it?

A. I believe in 1950.

Q. This was before 1950 that she was baby-sitting for you?

A. In that vicinity, I would say; yes.

Q. 1950 and before?

A. Well, to get back to the actual dates, it is quite hard.

Q. Well, it was between 1946 and 1950?

A. Well, between 1949 and 1950, when she baby-sitted for us.

Q. All right. How long did she baby-sit for you?

A. About three times.

(Testimony of Orville C. Johnson.)

Q. Oh, about three times. And did you have any conversations with the neighbors in the community about her? A. She did.

Q. Who did you talk to?

A. Well, not myself explicitly; my wife mostly.

Q. Well, I am asking you now if you talked to the people in the neighborhood, in that community?

A. Well, in the neighborhood, our next door neighbor at the time, which is gone. I have been trying to recall the name and can't. He was the high school—— [389]

Q. Well, when did he leave?

A. I believe he left in 1951.

Q. He left in 1951. You talked to him?

A. Yes.

Q. Your next door neighbor. Who else did you talk to? A. Mr. and Mrs. Robert Baer.

Q. Mr. and Mrs. Robert Baer. Where do they live? A. They live on Revilla and Pine.

Q. Revilla and Pine. Did they live over there then? A. No, sir; they did not.

Q. Well, I am talking about the community.

A. In that general vicinity; no.

Mr. Gilmore: If the Court please, the community means the City of Ketchikan and its environs.

The Court: Yes, but if he wants to start out by asking questions with whom he discussed the reputation—but you better get the name of the first person then.

Mr. Munson: Well, he said he doesn't remember it.

(Testimony of Orville C. Johnson.)

A. I am trying to remember his name and I can't. He was the high school coach in town.

Q. (By Mr. Munson): The high school coach; and he left town around 1951?

A. I believe that is about the correct time.

Q. And you talked to Mr. and Mrs. Baer?

A. That is correct. [390]

Q. And who else did you talk to?

A. Well, I have talked to Mr. and Mrs. J. Dammrell.

Q. Where do they live?

A. They live on North Tongass.

Q. North Tongass?

A. North Tongass.

Q. And you said Mr. and Mrs. Baer live—where did you say they live?

A. I believe it is Revilla and Pine. I don't know the exact house.

Q. Who else have you talked to about Loretta?

A. Well, I have talked to Mr. and Mrs. Bill Bridenstein.

Q. Bridenstein. Where do they live?

A. Well, I believe Bill and his wife were living down here on a boat at Thomas Basin for quite some time, and I don't know whether they are in town at present or not.

Q. They live on a boat at Thomas Basin?

A. He was a logger.

Q. When was this? This was about 1950-1951?

A. No. I talked to them this year, in the last three or four or five months.

(Testimony of Orville C. Johnson.)

Q. In the last three or four or five months?

The Court: That is after the case started. That part of it is stricken.

Q. (By Mr. Munson): Is that when you talked to Mr. Bridenstein [391] and Mr. Baer, in the last three or four or five months? Then who else did you talk to?

A. Well, I talked to Mrs. Hazel Suchy, but that was a few days ago.

Q. A few days ago? A. Yes.

Q. I mean, did your interest in Loretta's reputation for truth and veracity develop within the last two or three months?

A. No, it did not, sir. I can assure you of that.

Q. Mrs. Hazel who? A. Suchy.

Q. How do you spell that; do you know? S-u-c-h-e-y? A. S-u-c-h-i-a, I believe it is.

Q. Where does she live?

A. She is out to camp in Chomley, I believe, in a logging camp. Her and her husband have a logging camp out there.

Q. Where was that?

A. Out by Chomley.

Q. And you talked to her just a couple days ago? A. Just recently; yes.

Q. Very recently. Now, who else have you talked to about Loretta?

A. Well, a lot of people in general. I can't remember all of their names. [392]

Q. What did you ask them? What did you talk about?

(Testimony of Orville C. Johnson.)

A. Well, we was talking about the truth of Loretta in reference to baby sitting because we lost a few articles in our home and we have never been able to pin-point it down.

Q. This was before 1950?

A. This was in 1950.

The Court: Any conversation has got to be limited to her reputation for truth and veracity, not to theft or anything of that kind. That is what your question has got to be limited to.

Mr. Munson: That was unresponsive to my question.

Q. (By Mr. Munson): Well, who else have you talked to about Loretta?

A. Well, it would be quite hard, sir, to try to recollect all of them.

Q. Well, did you talk to these people, or did your wife talk to them?

A. My wife has talked to some, and I have talked to several of them.

Q. And you did this talking to them around the time of the baby sitting, around 1950?

A. That is correct.

Mr. Munson: Your Honor, I move that his testimony be stricken on the ground that the people that he has talked to were all four years ago or else within the last two or [393] three months; both times would not be representative; and also because the number of people that he recollects could not possibly represent a sample of the opinion of the community.

(Testimony of Orville C. Johnson.)

The Court: Did these people use the word “veracity”?

A. No, sir. We were——

The Court: Or “reputation”?

A. We were talking about Loretta and at the time she was——

The Court: Well, how many of these persons whose names you have given did you talk to yourself?

A. Well, the ones that I have mentioned I have talked to myself, personally, sir.

The Court: All of them?

A. That is correct.

The Court: And that was, as I understand it, between 1949 and 1950?

A. No. Between 1950 and the present. In 1949, sir, I quit my employment with the C.A.A. over at Annette Island and came back to town, in June 1949.

The Court: Well, your motion was predicated, as I understand it, on the fact that his testimony was based on what he heard four years ago?

Mr. Munson: Yes, your Honor.

The Court: But now he says that it isn't.

A. Well, what I am trying to get at, sir, is the time that we had Loretta employed, we missed a few articles, and [394] naturally you hear about——

Mr. Ziegler: Just a minute, Mr. Johnson. The Court hasn't asked you any question.

Q. (By Mr. Munson): Didn't you just tell me a minute or so ago that you made these inquiries

(Testimony of Orville C. Johnson.)

about the time that she was baby sitting for you or shortly thereafter?

A. Yes. That is when people were in doubt about her and so was I, so we got in conversation.

Q. That was about 1950. Now, have you talked to any of these people——

The Court: Well, the testimony is stricken on the ground that it is too remote. This is a young girl who at that time must have been ten years of age.

Mr. Gilmore: May I ask just one more question?

The Court: Yes, you may.

Redirect Examination

Q. (By Mr. Gilmore): Didn't you have conversations——

The Court: You can't ask leading questions now.

Q. (By Mr. Gilmore): Did you have some discussions concerning Loretta's reputation in this community for being a truthful or untruthful person after 1950? 1951, '52, and '53, and up to 1954?

A. I have, and I stated with Mr. and Mrs. Baer.

Q. And was that, some of the discussions, prior to April 24th of this year?

A. That is right.

Q. And still in 1954?

A. That is right.

Mr. Gilmore: No further questions.

Recross Examination

Q. (By Mr. Munson): Mr. Johnson, when were you asked to testify in this case?

(Testimony of Orville C. Johnson.)

A. I talked to Mr. Ziegler and Mr. Gilmore Sunday.

Q. I didn't ask you whether you talked to them. When were you asked to testify?

A. A couple or three days ago.

Q. And are you familiar with the defendant?

A. I have known Blackie a long, long time.

Q. Are you a good friend of his?

A. Yes; I am a very good friend of his. I was in business with him at one time.

Q. Now, didn't you say with reference to Mr. and Mrs. Baer, didn't you tell me just a few minutes ago that you talked to them within the last three or four months?

A. Well, probably in the last few months that we have had our card game, I guess.

Q. I mean about this particular thing, Loretta's truthfulness? [396]

A. Well, our conversation was based on her truthfulness, a conversation that you run across when you are playing cards in a home.

Q. You mean, when you are playing cards in a home, you start discussing things like people's truthfulness and veracity under oath?

A. No; not about her truthfulness under oath.

Q. I mean, isn't it a fact that what you were discussing had to do with something outside of truthfulness; had to do with theft, perhaps?

A. That is right; it did.

Mr. Munson: I renew the motion that his testimony be stricken.

(Testimony of Orville C. Johnson.)

Redirect Examination

Q. (By Mr. Gilmore): Just one question. Didn't it also deal and didn't you also discuss——

The Court: That is a leading question. He is your witness.

Q. (By Mr. Gilmore): Or did you discuss at the same time the question of her truthfulness?

A. Well, we were discussing it back and forth. We had every doubt in the world to believe it.

The Court: Well, the testimony is ordered stricken [397] not only on the ground that it is too remote but that it doesn't constitute general reputation evidence. The jury is instructed to disregard it.

Mr. Gilmore: You may be excused. Thank you, Mr. Johnson.

(Witness excused.)

BILL TATSUDA

called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Gilmore): Will you state your name please? A. Bill Tatsuda.

Q. How old are you, Bill?

A. Thirty-eight.

Q. Where do you live?

A. 525 Grant Street.

Q. How long have you lived in Ketchikan?

A. All my life.

(Testimony of Bill Tatsuda.)

Q. You were born here? A. Yes.

Q. Do you know Loretta Lindsey?

A. Yes, I do.

Q. Do you know her reputation in this community, in the community of Ketchikan, for truth and veracity? [398]

A. Yes; I think I do.

Q. Is it good or is it bad, Bill?

A. Well, it is not good.

Mr. Gilmore: Take the witness.

Cross Examination

Q. (By Mr. Munson:) Mr. Tatsuda, is your father Mr. Lindsey's bondsman?

A. Yes, he is.

Q. Are you a good friend of Mr. Lindsey's?

A. Yes, I am.

Q. Have you been for a long period of time friends? A. Oh, fifteen years or so.

Q. Who have you discussed Loretta's truthfulness with?

A. I haven't discussed it with anybody. I heard.

Mr. Munson: I move that his testimony be stricken, your Honor.

Redirect Examination

Q. (By Mr. Gilmore): You mean you heard it discussed, Bill?

A. I have heard it discussed; yes.

Mr. Gilmore: That qualifies it. [399]

(Testimony of Bill Tatsuda.)

Recross Examination

Q. (By Mr. Munson): Who have you talked to concerning her reputation——

The Court: Well, in view of his testimony you will have to ask him whom have you heard.

Mr. Gilmore: Yes.

Q. (By Mr. Munson): Who have you heard discuss it?

A. Well, I have heard her brother, Bob Lindsey, and her father, Rollie Lindsey, discuss it.

Q. And who else?

A. I don't know anybody else; I am not sure; but I have heard it other places.

Q. But you can't remember where?

A. But I can't remember when or where.

Q. Can you remember when?

A. Oh, it has been quite a while, I believe.

Q. You mean over a period of years?

A. Oh, it has been the last three years, two years.

Q. The last two or three years. I don't want to repeat this again. I think I misunderstood you. You said that you yourself never talked to someone about her truthfulness?

A. I don't believe I have; no.

Q. It has never been a subject that you were engaged in conversation? A. No. [400]

Q. You just were standing by and heard two other people talking?

A. Well, I was listening. It was on a hunting

(Testimony of Bill Tatsuda.)

trip, and I was right there with them when they were talking.

Q. I see. Was that when Rollie and Bob were on a hunting trip? A. That is right.

Q. And you heard them?

A. That is right.

Q. And you don't remember when that was, do you?

A. Well, it had to be in the fall of 1952.

Q. The fall of 1952. And you don't recall any other conversations that you can distinctly tell me?

A. No, I can't.

Mr. Munson: Your Honor, I move that his testimony be stricken on the ground that it is too remote in time and does not represent a cross section of the community. It represents two people, and one is the defendant.

The Court: The motion is granted, and the testimony is stricken on the ground that it doesn't constitute evidence of general reputation, and the jury is instructed to disregard it.

Mr. Gilmore: Thank you, Bill. You may be excused.

(Witness excused.) [401]

ROBERT E. BAER

called as a witness in behalf of the defendant, being first duly sworn, testified as follows:

(Testimony of Robert E. Baer.)

Direct Examination

Q. (By Mr. Gilmore): Will you state your name please? A. Robert E. Baer.

Q. And where do you live, Mr. Baer?

A. 527 Revilla Avenue.

Q. Here is Ketchikan?

A. That is right.

Q. How long have you lived here?

A. I came here in 1950.

Q. And do you know Loretta Lindsey?

A. I do.

Q. And how do you happen to know her? What is the nature of your acquaintanceship with her?

A. Well, we hired her as a baby sitter around the first part of this year.

Q. Now, do you know her reputation in this community, her general reputation in this community, for truth and veracity? A. I do.

Q. Is it good or bad, Bob?

A. I wouldn't say it was good.

Mr. Gilmore: Take the witness. [402]

Mr. Ziegler: Did you say you would say it was not good?

A. I would not say it was good.

Cross Examination

Q. (By Mr. Munson): Mr. Baer, when did you say you hired Loretta as a baby sitter?

A. Around the first part of this year; shortly after I got married.

(Testimony of Robert E. Baer.)

Q. And had you made any inquiries about her before you hired her?

A. No; not before we hired her we hadn't.

Q. Now, where did you live at that time?

A. 527 Revilla Avenue.

Q. How many times did she baby-sit for you?

A. Probably four or five times.

Q. Four or five times. Now, you just stated that you know her reputation in the community, and I am going to ask you the same question that I have asked the other witnesses. Who did you talk to?

A. Well, I remember talking specifically to Mr. and Mrs. Johnson.

Q. You mean the man that was first up here?

A. That is right. [403]

Q. Orville or Cal Johnson? A. Yes.

Q. You talked to them?

A. I remember talking to them.

Q. Incidentally, are you a friend of Mr. Johnson's?

A. Oh, I have known Cal since I came to town.

Q. Are you a friend of Mr. Lindsey's?

A. I wouldn't say I was a very close friend of Rollie's. I have known him, is about all.

Q. When were you subpoenaed to appear in this case? A. Well, I was——

Mr. Ziegler: He wasn't subpoenaed.

Q. (By Mr. Munson): Oh, you weren't subpoenaed. You are up here voluntarily; is that right?

A. That is right.

Q. When were you asked to appear?

(Testimony of Robert E. Baer.)

A. Three or four days ago.

Q. Three or four days ago. All right. Now, I will ask you the question I asked the other character witnesses. Who did you talk to? You said Mr. and Mrs. Cal Johnson?

A. I also talked to Larry Pawsey.

Q. And you talked to Larry Pawsey. Now, Larry Pawsey is an uncle of the complaining witness?

A. Yes.

Q. A member of the family? [404]

A. That is right.

Q. And who else did you talk to?

A. Well, those are the only two specific people that I can remember.

Q. Those are the only two that you can recall talking to?

A. That is, specific. I have heard conversation.

Q. Well, who did you hear?

A. Well, I couldn't say. I worked at the V.F.W. Club for quite a while and I have heard conversations back and forth.

Q. Well, when did you hear these conversations?

A. Oh, it has been during this year.

Q. You mean that the subject of Loretta's truthfulness has been a subject matter of the V.F.W. Club?

A. It has been discussed up there; yes.

Q. You mean the case has been discussed up there?

A. At the bar. Well, the case; yes.

Q. And is Mr. Lindsey a member of the Club?

(Testimony of Robert E. Baer.)

A. Yes; Rollie is a member.

Q. He is a member of the V.F.W.?

A. That is right.

Q. When did you talk to Cal and Mrs. Johnson about this case?

A. I can't remember the specific date, but I know it was before Rollie was charged.

Q. It was around the first of the year? [405]

A. Yes, it was.

Q. Didn't you just tell me that you hired her as a baby sitter around the first of the year?

A. That is right.

Q. In other words, you hired her even though you talked to Mr. Johnson about her truthfulness?

A. This was after we had refused to hire her any more, that I talked to Mr. Johnson.

Q. I mean, what you are saying is that Mr. Johnson didn't like her?

A. Well, we had already——

Q. How about Mr. Pawsey?

Mr. Ziegler: Let him answer the question.

A. We had already discharged Loretta as a baby sitter before I talked to Mr. Johnson.

Q. (By Mr. Munson): I know. You already said that. How about Mr. Pawsey?

A. Well, I discussed it with him the day that Rollie was charged.

Q. You discussed it with him that day.

Mr. Munson: I move to strike this testimony as not being reputation evidence, your Honor.

(Testimony of Robert E. Baer.)

Mr. Ziegler: If the Court please, I think all these questions go to the weight of it and not the admissibility.

The Court: It couldn't possibly constitute general [406] reputation if he has only talked to somebody in the family and then somebody whom he doesn't recall. The motion is granted. The testimony is stricken, and the jury is instructed to disregard it.

Mr. Gilmore: That is all, Mr. Baer. Thank you very much.

(Witness excused.)

Mr. Gilmore: If the Court please, except for the announcement that I made just before calling these witnesses, the Government—I mean, the defense now rests its case in chief, subject to questioning Loretta.

The Court: Are you ready to go ahead with your rebuttal?

Mr. Munson: Well, your Honor, I moved a little while ago, or I meant to if I didn't, I meant to recall the defendant to the stand for one question, but I can call him as a rebuttal witness.

The Court: But you can't call him as a rebuttal witness. He is the defendant. You can only recall him for cross examination.

Mr. Munson: I would like to recall the defendant to the stand for one question. [407]

ROLLAND LINDSEY

recalled as a witness in his own behalf, having previously been duly sworn, testified as follows:

Cross Examination

Q. (By Mr. Munson): Mr. Lindsey, I want you to go back in your memory now to a time when your sister-in-law, Florence Dalton, was a baby sitter at your house.

A. I don't remember her baby-sitting at my home. I don't remember.

Q. I will ask you this way then. Could it be—I mean, you just don't remember; this was quite a long time ago—could it be that when Florence was twelve or thirteen years old that she was a baby sitter in your home on a night that you and your wife and possibly Larry Pawsey were out in the evening?

A. How long ago was this supposed to have been now?

Q. Oh, quite a few years ago. Could it have happened?

A. Well, anything, I suppose, could have.

Q. Here is what I want to ask you.

The Court: Well, it makes no difference whether he remembers it or not. You have a right to ask what question you want to ask whether he remembers somebody being present or not, so let's get on with the case.

Q. (By Mr. Munson): Now, that night when you came home did you or did you not get in bed with Florence Dalton? [408]

(Testimony of Rolland Lindsey.)

Mr. Ziegler: Now, if the Court please——

A. I don't remember that.

Mr. Ziegler: Just a moment. We object to that as absolutely immaterial.

Mr. Munson: Your Honor, it is being introduced under the pattern, intent, motive exception that—I mean, this is only an impeaching question, but the evidence which is sought to be elicited is perfectly admissible.

Mr. Ziegler: It is collateral and would open up the whole thing for a trial on another claim that someone——

The Court: For instance, in the present state of the testimony I don't think that—it is just a question of credibility. There isn't any question of intent, and I can't think of any issues in the case that would call for the admission of any evidence, under any of the known exceptions to the hearsay rule or under the rule as to the admissibility of evidence, of other offenses. For instance, where there is a question of intent, a question of knowledge, a question of motive, a question of system, why, evidence of other offenses is admissible, but I just don't see any such situation as that in this case.

Mr. Gilmore: Is that all, Mr. Munson?

Mr. Munson: I am afraid to get into any discussion of this, your Honor, in front of the jury for fear that it may be prejudicial. It is almost 12:00 o'clock. Could we have [409] the jury excused?

(Testimony of Rolland Lindsey.)

Mr. Gilmore: We could finish the trial, if the Court please, probably before noontime and argue it this afternoon. What is the reason for a recess?

The Court: Well, he merely wants a recess to state his position with reference to the admissibility of the offered evidence.

Mr. Gilmore: We could approach the bench.

The Court: Either way is satisfactory.

Mr. Munson: The Government is going to put in rebuttal evidence, so the trial won't be finished by noon.

Mr. Gilmore: We have no rebuttal, if the Court please, except the one question of Loretta.

The Court: Well, but the question of rebuttal or surrebuttal is not before the Court, and it makes no difference. We can't conclude before noon; that is a cinch.

Whereupon respective counsel and the court reporter approached the bench, out of the hearing of the jury, and the following occurred:

Mr. Munson: Your Honor, I don't think I understand the position of the Court with regard to this evidence. Here is what it is being introduced for. I am trying to lay the impeaching question with a view to bringing into evidence proof of a prior crime, prior offense of the same type, nature, as is found in this case, to show—— [410]

The Court: I understand that.

Mr. Munson: And also I intend to lay the groundwork for a possible hypothetical question.

(Testimony of Rolland Lindsey.)

The Court: You better state what you intend doing so I won't be in the dark about it.

Mr. Munson: I intend to show by medical testimony that a person who, as long ago as ten or twelve years ago, who would make an advance upon a young girl, in this case Florence Dalton, would still have the same mental and psychological pattern now.

Mr. Ziegler: That is collateral.

The Court: That may be, but I think the Court has the duty in admitting evidence of that kind to weigh the prejudice against its logical relevancy and there is involved the policy of excluding evidence if its prejudicial character would outweigh it. I am afraid it is of that character. We will proceed.

Whereupon respective counsel and the court reporter withdrew from the bench and were again within hearing of the jury, and the trial proceeded as follows:

Mr. Munson: That is all, Mr. Lindsey.

Mr. Gilmore: No questions.

(Witness excused.)

The Court: Is there any objection to our resuming at 1:30 this afternoon? [411]

Mr. Gilmore: We have none.

The Court: Would anybody on the jury be inconvenienced? I suppose it would be inconvenient.

Whereupon Court recessed until 1:30 o'clock p.m., November 24, 1954, reconvening as per recess, with all parties present as heretofore and the jury all

present in the box; and the trial proceeded as follows:

The Court: You may proceed.

Plaintiff's Rebuttal

CHARLES L. ANDERSON

called as a witness on behalf of the plaintiff, having previously been duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Munson): You have been sworn. Doctor Anderson, do you recall that you were on the stand yesterday? A. I do.

Q. And I asked you if you had any occasion to examine—well, maybe I better refresh the memories of—you stated your qualification, that you are a psychiatrist and a medical doctor; is that correct?

A. I did, yes.

Q. Are there any other psychiatrists in Alaska that you know of, qualified, I mean?

A. There are some in the Air Force, not in civilian practice. There is another qualified psychiatrist in Anchorage who [412] is a woman and is raising her family and is not in practice. I am the only civilian in practice.

Q. The only civilian psychiatrist who is qualified to practice in the Territory in civilian practice?

A. Yes.

Q. Well, Doctor, yesterday I asked you if you had any occasion to make an examination of Lor-

(Testimony of Charles L. Anderson.)

etta Lindsey, the complaining witness in this case?

A. Yes.

Q. And you said you had. Would you tell when you first met her and any subsequent professional relationships you had with her?

A. I first saw her on the 28th of April, 1954. When I came to Ketchikan in October, further information was presented to me, and I ordered a psychological test to be done by my psychologist, James Parsons. That was done on the 6th of October. On the 7th of October I talked to Loretta in the home of Reverend McMaster regarding a test to be done the following day, and on the 8th of October I conducted this test in the General Hospital here.

Q. What kind of test was that?

A. That was a sodium pentothal interview, commonly known as truth serum.

Q. You conducted that test at the Ketchikan General Hospital? A. That is right. [413]

Q. Doctor, would you enlighten me and the Court and members of the jury as to the nature of a test of this kind?

Mr. Ziegler: Now, if the Court please, we object to any testimony of this nature on the ground that it is incompetent, irrelevant and immaterial and it is not scientifically recognized or admissible in evidence in court.

The Court: Well, he hasn't asked the question yet as to the result of the test. He merely asked him to describe the test.

(Testimony of Charles L. Anderson.)

Q. (By Mr. Munson): Would you describe the test, Doctor?

A. Well, in the test we use a drug—well, there are two drugs that can be used, either sodium amytal or sodium pentothal. I use sodium pentothal. It is injected intravenously, that is, right into the vein. It is injected slowly. This drug, sodium pentothal, is an intravenous anesthetic, but used in smaller doses it makes a person sleepy or even asleep but not deeply enough so that it can be considered an anesthetic for operation. Now, under its influence an individual will talk.

Mr. Ziegler: Now, if the Court please, we renew our objection until the Court rules on the question.

The Court: He is merely describing the test at the present time. It is within my ruling.

Q. (By Mr. Munson): Go on, Doctor.

A. An individual will talk and answer questions as though [414] awake. Generally, afterwards the individual doesn't remember what was said.

Q. Now, what is the effect of this drug upon the mind of the person being interviewed?

A. It has its effect first on the highest centers of the mind, and I mean by that the consciousness, and even before that it removes inhibitions. It has an action similar to other anesthetic drug.

Q. Well, how does it get its colloquial name of truth serum? How do you describe that?

A. Well, it gets its name from that because from the very beginning, before the individual is actually asleep, it removes certain inhibitions so the in-

(Testimony of Charles L. Anderson.)

dividual will spontaneously say what the individual would have said without trying to exercise control over not saying it.

Q. You mean it inhibits a person's control over his mind?

A. That is right. You could say it inhibits or removes to a greater or lesser degree the controls over what would be said.

Q. Now, is this sodium pentothal test a recognized test in the field of psychiatry and science?

A. It very definitely is.

Q. And in your opinion as a psychiatrist and medical expert what do you consider its reliability to be?

A. I think it is a highly reliable test when properly used [415] and considering the whole case that you have in mind.

Q. Well, considering this case that we are talking about here, would you say as an expert that a fourteen-year-old girl would be a reliable subject upon which this test would have a great deal of reliability?

A. I would say it does.

Q. Would you explain that?

A. Well, a fourteen-year-old girl is not so experienced in the ways of the world, let's say, more likely to be, more likely to say what would come out. I would say that in a situation such as this it would be a highly reliable test.

Q. Well, Doctor, you made this test and other tests concerning the subject, Loretta Lindsey, upon which to make a medical or a psychiatric determina-

(Testimony of Charles L. Anderson.)

tion of her, of, one, her ability to fabricate, or her motive to lie, and also whether or not the girl was deranged in some manner or another that would prompt her to make charges such as this. Now, was this test, this sodium pentothal test, part of the battery of tests that you used upon which to base your opinion?

A. It was part of the evidence which I used.

Q. Go ahead.

A. It was part of the evidence I used, but not entirely of course. [416]

Q. Now, I am not sure whether the Court and jury are fully informed as to the impact of a test of this kind on this young girl who you have examined and know quite a bit about her emotional make-up, her, perhaps, her intelligence, her sensitivity, her conscience or lack of it. I wish you would go into those areas a little bit for the jury so that they get some idea of how this girl appears to you as a psychiatrist who examined her.

A. Well, naturally, when I first heard the story which the girl told, I wasn't going to swallow that story without some evidence that it was true, because in my work I am constantly hearing stories which I must evaluate to determine whether the individual is telling me something that is a fact or whether he has fabricated it, so I observed this girl as carefully as possible every time I have talked to her, when she first talked to me back on the 28th of April and here in this courtroom and the other times in between, and I noticed that, when

(Testimony of Charles L. Anderson.)

she was discussing material of a nature that would be very embarrassing to her, that she showed appropriate emotion.

Mr. Ziegler: Now, if the Court please, we object to this type of testimony. The eminent doctor is now apparently going to state some opinion of the, as a result of his observations, of the actions and conduct of the girl. Now, that is a matter invading the province of the jury, and, as a [417] psychiatrist, he is in no better position to express an opinion than the jury.

The Court: Well, Doctor, I believe you testified that this test, of the kind that you made on the prosecuting witness, is a test that is recognized in scientific circles and accepted as reliable?

A. That is right.

The Court: Well, I see no objection to the testimony as a result of the test. Objection overruled.

Mr. Ziegler: If the Court will permit us, we certainly renew our objection to the testimony showing any statements that were made or any result of the test as the doctor has described it, because under the law, as we understand it, by the Supreme Court of New Mexico, this type of testimony is not admissible.

The Court: Well, this testimony of course is not going to be substantive evidence. It will merely go to the rehabilitation of the witness or to substantiate, sustain or corroborate the witness. In other words, it is to rebut any inference of impeachment. It is not substantive evidence.

(Testimony of Charles L. Anderson.)

Mr. Ziegler: That is the very reason, as I understand it, that the courts have ruled against the admissibility of the evidence.

The Court: Well, there isn't any doubt, and of course you have to admit, that evidence of previous consistent [418] statements in a situation such as developed in this case are admissible to sustain and corroborate the witness. Now, that is all that this testimony is. It is admissible for the purpose of sustaining or corroborating the witness just as any previous consistent statement would be admissible in this situation.

Mr. Munson: It is also being offered, your Honor, to rebut the charges that this girl is a psychopathic liar and that she is mentally deranged, both of which were raised on the defendant's case, and what I was asking the doctor——

The Court: Well, I have already ruled it is admissible, so go ahead.

Q. (By Mr. Munson): Doctor, what I was trying to get at was how your study of this girl's emotional make-up, sensitivity and conscience would bear on this test; in other words, would this test be more reliable as to her because of what you know about her?

A. Yes. I think it all fits in together.

Q. Would you explain that for a moment?

A. Well, I started to mention that she shows the appropriate emotions that you would expect a girl to show in discussing a situation such as this;

(Testimony of Charles L. Anderson.)

that is, she was embarrassed; she wept. And I would say that a person who—since the term psychopathic personality has been brought up, I think it is appropriate to use it now so the jury will [419] know what that term means. We mean by that an individual who has no conscience. There are people who seem to have no concern at all for their own deeds, and nothing within them tells them they have done wrong. They are only sorry when they get punished or they get hurt for their misdeeds, but there is no conscience within them telling them that they have done wrong, so they usually show no emotion in situations such as this kind. Now, if this girl had come in to see me and told me this story without any apparent emotion, I would have suspected her very much, but she showed the appropriate emotions in telling it. She showed embarrassment, and she cried, and even showed irritation and anger at the appropriate situations, so that lead me to—that helped me to conclude that this girl is not a psychopathic personality.

Q. Would her age also have a bearing on the reliability of this test, her immaturity?

A. Yes. I believe it would be more reliable in an immature person.

Q. Would you tell the Court and jury the details of this test; how you took it; who was there; the general surrounding circumstances?

A. May I go back to the evening before?

Q. Yes.

(Testimony of Charles L. Anderson.)

A. I went to Loretta and said, "I want to give you"—I told [420] her that I wanted to give her a truth serum test. Without hesitation, after I had explained to her that under the influence of this she would not be able to tell a lie, that she would be forced to tell the truth, without hesitation she replied that she would be willing to take it, and, furthermore, she said, "Will Mr. Lindsey take it?" I informed her that I didn't have any knowledge of anything to do about Mr. Lindsey but it would be helpful for her to take it. She readily agreed.

The next day we had the test at the hospital. Those present were the District Attorney, Mrs. Mary Lou Truell, a psychiatric social worker who works with me in the Section of Mental Health, Alaska Department of Health, Loretta Lindsey, myself, and for part of the time James Parsons, a psychologist. Now, I injected the drug into a vein in her right arm slowly and made her sleepy to the point where she was actually very lightly asleep. Then I stopped the injection for the time being and let her awaken enough so that I could talk to her. Now, it was my desire, if possible, to break down her story so I went over this story with her, the story that is essentially what has been told here in court, essentially what she told me the first time, the 28th of April.

Q. Was a recording made of that?

A. A recording was made of that. [421]

Q. Would you recognize that again?

A. I could.

(Testimony of Charles L. Anderson.)

Mr. Munson: Your Honor, I would like to offer into evidence a tape recording of the interview that the doctor has just told about. I am offering it so that the jury and the Court will have an idea of the test that the doctor used to—upon which he has based and will base his expert opinion, and I also offer it as corroboration of an impeached witness by showing a statement consistent with her testimony at a time when she was unable to fabricate and prior to the time of the trial.

The Court: It may be admitted.

Mr. Ziegler: If the Court please, will you hear our objection? We renew our objection to any, under the ruling of the Court, any statements made during a test of this kind. Now, that is my understanding of the law.

The Court: Well, but, unless you have something to add to your previous objection, there is no use of merely repeating it.

Mr. Ziegler: Well, I renew the objection that there is no authority for the admission in court in the trial of this case of statements made by a person under the influence of some drug, sodium pentothal.

The Court: Well, there might not be any authority, but there never will be if the courts don't keep up with [422] science. I think the courts once in a while have to break away from the trodden path, and here is a situation that is very unusual. In the first place, you have offenses charged, which, because of their nature, depend upon the testimony

(Testimony of Charles L. Anderson.)

of the victim exclusively almost, and, after all, this doesn't amount to any more than the proof of prior consistent statements, and, if this were not done by means of a truth serum test, it would be admissible under all the authorities to sustain and corroborate the witness, so the objection is overruled.

Mr. Ziegler: I understand the Court's ruling, but does the Court understand my objection, I wonder. Now, if the Court please, could I be permitted to ask the doctor some questions now before this goes on?

The Court: Yes; if you think that they go to the——

Mr. Ziegler: For the purpose of my objection.

The Court: If you think it goes to the admissibility of this recording, otherwise——

Mr. Ziegler: I think it does. It could be passed upon when the questions are asked.

The Court: In other words, it must not be cross examination. It must be a preliminary examination, so to speak, as to the qualifications or something that goes directly to the admissibility of the recording.

Mr. Ziegler: Well, if the Court please, as I understand [423] the doctor's position, he stated that as part of the basis of his test he observed the conduct of the witness, her manifestations of sorrow and other emotions. As I understand it, he is basing it on those facts. Now, I want to ask if certain other conditions existed. In other words, he assumes that the girl is inexperienced in the ways of the

(Testimony of Charles L. Anderson.)

world and it is entirely on that assumption. If that is an erroneous assumption——

The Court: I don't think that that is a correct summation of the witness' testimony. It isn't based on those observations alone, so that, if that is all that you want to ask him, I think you will have to wait until cross examination.

Whereupon the tape recording was run off as follows, with questions by Doctor Anderson and answers by Loretta Lindsey:

Q. O.K., Loretta. Loretta, can you hear me?

A. Yes.

Q. Now, I want to ask you this. You have talked about Mr. Lindsey, haven't you? A. Yes.

Q. Now, who is Mr. Lindsey?

A. My adopted father.

Q. O.K.

(Playing of tape recording suspended.) [424]

Mr. Munson: Is that the interview at the beginning as you remember it?

Doctor Anderson: That is right.

The Court: I think you should put it on the table there in front of the jury and not have it so loud.

Mr. Munson: I have only got a small lead.

The Court: Oh.

(Playing of tape recording resumed.)

Q. (By Doctor Anderson): And is he the husband of your aunt who adopted you; is that right?

A. (By Loretta Lindsey): Yes.

Q. Did Mr. Lindsey adopt you or did Mrs. Lindsey only adopt you? A. They both.

(Testimony of Charles L. Anderson.)

Q. They both adopted you? A. Yes.

Q. And he is your uncle by marriage before he adopted you? A. Yes.

Q. That is right. Now, you have said some things about Mr. Lindsey that has caused some concern; is that right? A. Yes.

Q. Now, what about that? You have said some things about him, and then you have changed your story a little bit; do you recall doing that?

A. Yes. [425]

Q. Now, did Mr. Lindsey have sexual intercourse with you? A. Yes.

Q. Did he do it very often?

A. Whenever he was home.

Q. How old were you when he first started this kind of thing? A. About nine, I guess.

Q. And did he actually have intercourse with you when you were nine? A. No.

Q. What did he do then?

A. Well, he—he——

Q. When you were nine what did he do?

A. He called up my Mom and told me to bring something down to the boat to him, and——

Q. This is the first time now? A. Yes.

Q. Yes; all right.

A. And then he sent my brother Bob away when I got there and he took the boat off and drifted it out into the bay.

Q. This was in Ketchikan? A. Yes.

Q. And you were nine years old?

A. Yes.

(Testimony of Charles L. Anderson.)

Q. And when the boat was drifting in the bay what did he do?

A. Well, he told me to go downstairs, and so I did, and then [426] he came downstairs with some lard in his hand and he put that on his, oh, I guess you would call it, penis, and he put it on there; I don't know why; but he told me to lay down, so I did what he said to do, and then he got on top of me.

Q. Did you have your clothes on?

A. Part of them.

Q. Did he take them off, or did you?

A. No. He did.

Q. And when he got on top of you, what did he do?

A. He put his penis into my private part of my body, and it wouldn't go, and he kept on trying to force it to go, and I screamed.

Q. Did it hurt? A. Yeah.

Q. Did he ever get it in?

A. Not when he first tried.

Q. Not that time? A. No.

Q. How long—how much later was it that he first got his penis in?

A. Well, the first time he really got it in was when my mother went to the hospital.

Q. This is your adopted mother?

A. Yes. [427] A. Yes.

Q. Yes. She went to the hospital?

A. Yes.

Q. For what? A. To have a baby.

(Testimony of Charles L. Anderson.)

Q. Was that her first baby?

A. Yes, it was.

Q. What was the date of that? Do you remember the date?

A. October 22nd. He will be three this year, so it was about three years ago.

Q. Three years ago October 22nd. What year would that be then? A. 1951, I guess.

Q. 1951. That was the first time he ever got in?

A. Yes.

Q. How old were you then?

A. I was twelve.

Q. You were twelve. Had you started having periods then? A. Yes.

Q. Had you developed as a woman by that time?

A. I guess you would say that.

Q. You have told Mr. Munson about this first time before, have you? A. Yes, I have.

Q. Now, he was able to get inside that time?

A. Yes.

Q. Did it hurt?

A. Yes, it did, very much.

Q. Did it make you bleed any? A. No.

Q. Now, are you telling us exactly what happened? A. Yes, I am.

Q. Now, why are you telling this?

A. Because I can't take any longer what he was doing to me and to help my sister so she won't have to go through the same thing I have gone through.

Q. Where is your sister?

A. She is home.

(Testimony of Charles L. Anderson.)

Q. Does she live with the Lindseys?

A. Yes.

Q. How old is your sister?

A. She will be two this coming November.

Q. Two? A. Yes.

Q. Well, now you said a baby was born three years ago?

A. That was my little brother.

Q. Oh, that was your little brother?

A. Yes.

Q. Now, then, your sister is almost two?

A. Yes. [429]

Q. Now, is this your sister, your full-blood sister? A. No. She is actually my cousin.

Q. She is actually your cousin? A. Yes.

Q. And she is also your adoptive sister; is that correct? A. Yes.

Q. Now, Loretta, why did you later change your story and tell your father, your adoptive father, that this wasn't so?

A. Well, he knew it was so, but I wanted to do that to help my Mom and the kids.

Q. What do you mean by that?

A. Well, they would have lost their Mom and Dad and things and so——

Q. Would they have lost their Mom?

A. Yes.

Q. How would they have lost their Mom?

A. By having Mr. Lindsey sent away.

Q. Would that be their Mom or their Pop?

A. And her husband and the kids' Dad.

(Testimony of Charles L. Anderson.)

Q. Oh, I see. You felt sorry for Mrs. Lindsey and the kids? A. Yes.

Q. Well, didn't you go to a lawyer with Mr. Lindsey and swear that the story wasn't true?

A. Yes. [430]

Q. Now, why did you do that?

A. Because I, because I had to do it because——

Q. You had to? A. Yes.

Q. What do you mean, you "had to"?

A. Well, because my Mom is actually my aunt, and I didn't want to hurt her or the kids.

Q. Oh, you didn't want to hurt her or the kids?

A. Yes.

Q. When you went to the lawyer, you went there with your foster father, didn't you?

A. Yes.

Q. With Mr. Lindsey? A. Yes.

Q. When you went there, were you telling the truth or were you telling a lie?

A. I was lying.

Q. You were lying. And you said you were lying to protect them? A. Yes.

Q. Now, then, later you talked to Mr. Munson again, didn't you? A. Yes.

Q. And did you tell him the truth or a lie?

A. The truth. [431]

Q. The truth. Do you remember when you saw me in April of this year? A. Yes.

Q. Do you remember when you came and talked to me? A. Yes.

Q. Were you telling me the truth then?

(Testimony of Charles L. Anderson.)

A. Yes.

Q. Do you remember talking to Mr. Parsons a few days ago, this week? A. Yes.

Q. And he gave you some tests and had you tell some stories? A. Yes.

Q. Were you telling him the truth?

A. Yes.

Q. Now, are you telling us the truth now?

A. Yes.

Q. Now, then, the truth is what? Is it the truth that Mr. Lindsey did all these things with you?

A. Yes, it is.

Q. How many times can you remember actual dates? You mentioned October 22, 1951, didn't you?

A. Yes.

Q. What happened on October 22, 1951? Did he have intercourse with you on that date? Loretta? Loretta? Can you hear me? [432] A. Yes.

Q. Are you sleepy? A. Yes.

Q. Are you real sleepy? A. Yes.

Q. Can you tell me what happened on October 22, 1951? A. October 22nd?

Q. 1951.

A. That was when my little brother Randy was born.

Q. What did Mr. Lindsey do then?

A. He told me to stay home and do the wash for him in the afternoon because we had about a half a clothes full of dirty clothes.

Q. Was this on October 22, 1951? A. Yes.

(Testimony of Charles L. Anderson.)

Q. Was this the time he took you on the boat?

A. No. It happened at the house.

Q. Oh, this happened at the house, the first time he succeeded with you? A. Yes.

Q. You mean, the first time he got his penis into you? A. Yes.

Q. He did that in the house? A. Yes.

Q. The boat time was when you were nine years old? [433] A. Yes.

Q. Did he do anything in between those times, the first time on the boat and then this time on October 22, 1951; did he fool around with you at all in between? A. Yes.

Q. Very many times? A. A lot of times.

Q. And what did he do to you?

A. Well, he tried intercourse a lot more times in between.

Q. And didn't succeed?

A. Yes; and then he used his tongue and his fingers.

Q. On you?

A. Yes; and he stuck his penis in my mouth.

Q. Did he do that very many times?

A. Yes, he did.

Q. Then, can you remember any other exact dates when he had intercourse with you?

A. Besides the one I just gave you?

Q. Yes; besides this October 22, 1951, date. Any since then; and the dates since then you can remember? A. Two other ones.

Q. What are those dates?

(Testimony of Charles L. Anderson.)

A. October 22, 1952, and February 27, 1953.

Q. How do you remember those dates?

A. Because my mother went to the hospital.

Mr. Munson: Loretta, don't you mean February 27, 1954? Wasn't it this year? Do you remember that date? A. Yes.

Q. (By Dr. Anderson): February 27, 1954?

A. Yes.

Q. And what was the date of the second baby?

A. The date?

Q. The date it was born, the second baby?

A. February 27th.

Mr. Munson: That is the third baby.

Q. (By Doctor Anderson): Is that the third baby? A. Yes.

Q. What about the second baby?

A. The second baby?

Mr. Munson: Your sister.

Q. (By Doctor Anderson): Your little sister; what is that date?

A. Well, she went to the hospital and had her, had my little sister Janice.

Q. What was the date for that?

A. October 23, 1952.

Q. She had one in 1951, another one a year and a day later in 1952, and then a little over a year later the next one comes in 1954; is that right?

A. A year and forty-five minutes. [435]

Q. A year and forty-five minutes; just over the line? A. Yes.

Q. Well, now, that means every time your step-

(Testimony of Charles L. Anderson.)

mother, not step-mother, but your foster mother, went to the hospital this foster father of yours had intercourse with you? A. Yes.

Q. Did he do it other times too?

A. Yes; but I can't remember the specific dates.

Q. Oh, that is why. Well, now, how often did it happen? A. Specific dates, or not?

Q. No. I mean, not specific dates, but just as you went along there living with him, how often did he have intercourse with you?

A. Whenever he came home.

Q. Well, how often would that be?

A. Oh, once every two weeks, or two times every two weeks.

Q. So he had it every week or every two weeks? Can you hold still, Loretta? Now, why did you decide to go back and tell the same story again, Loretta? What is the matter? Loretta? Are you awake? What is the trouble, Loretta?

A. I don't feel awake.

Q. You don't feel what? A. I don't feel awake.

Q. You don't feel awake? Do you feel sleepy?

A. Yes. [436]

Q. Why are you crying?

A. Something is hurting.

Q. Where does it hurt? A. I don't know.
(Pause—no recording audible.)

Q. You are not crying because of what you have told us, are you? A. No.

Q. Where does it hurt?

A. It doesn't hurt any more.

(Testimony of Charles L. Anderson.)

Q. It doesn't hurt any more now? A. No.

Q. That was the needle that was hurting; see; that needle I stuck in your arm. It has stopped hurting now? A. Yes.

Q. Why did you decide to tell Mr. Munson the truth again?

A. Because Mr. Lindsey told me that he didn't know if he could control himself after I came home.

Q. You mean he tried to do it to you again?

A. Yes.

Q. Did you like that idea? A. No.

Q. You didn't like it? A. No.

Q. So you—is that the only reason you decided to tell the [437] truth again? A. No.

Q. What other reasons?

A. He told me right in front of my Mom and my Gram, because the doctor said I had actual intercourse with someone, and he said to say that I just stuck a banana or something up me.

Q. Did you like that suggestion?

A. No. And I couldn't see how my Mom or my Gram could believe somebody that would say that.

Q. Now, I think last night you told me that he tried the same sort of thing with somebody else?

Mr. Ziegler: (Interposing during the playing of the recording.) Now, if the Court please, just a moment.

A. I couldn't be positively sure, but, I mean, oh, yeah, on that one I could.

(Playing of recording suspended.)

(Testimony of Charles L. Anderson.)

Mr. Ziegler: Just a moment. That part of it the Court has ruled on.

The Court: That part of it is within the Court's ruling.

Whereupon the volume was turned down so the recording was inaudible; and thereafter the playing of the recording was resumed as follows:

Q. (By Doctor Anderson): Why didn't you tell about Mr. Lindsey [438] before you really did tell about him? Why didn't you tell earlier?

A. Because I didn't know who to go to or what to tell anybody because my cousin Faye said (volume again turned down so recording inaudible)—and nobody believed her.

Your cousin Faye—Faye who?

(Volume again turned down so recording inaudible.)

Q. Were you scared to tell? A. Yes.

Q. Then what made you finally decide to tell?

A. Because he hit me a lot of times.

Q. Is that the only reason, because he hit you?

A. And because I just couldn't take it any more.

Q. Now, who was the first person you told?

A. The first person I told was Mr. and Mrs. Don Riewold.

Mr. Munson: Are you sure it wasn't Arleen Field?

A. Well, I told her before then, but those were the grownups.

Mr. Munson: Oh.

Q. (By Doctor Anderson): The first grownups?

(Testimony of Charles L. Anderson.)

A. Yes.

Q. Then did you tell other people too?

A. Yes. I told my brother Bob about it.

Q. Did you tell any policemen about it?

A. No. My brother did that.

Q. Your brother did that? [439] A. Yes.

Q. And you told them because you were tired of the whole situation? A. Yes.

Q. Have you been telling us the truth all the time while we have been talking to you here?

A. Yes.

Q. Are you still sleepy? A. Yes.

Q. Oh, let me ask you this, Loretta. Did you enjoy these experiences with your uncle?

A. No.

Q. No. Now, I would like to ask you one thing else. You told Mr. Munson that your uncle used to put his penis in your mouth and then have intercourse with you, and you told me that he would have intercourse with you and then after he lost his erection then he would put it in your mouth. Now, which way did it happen?

A. He did both, but he didn't put his penis in my mouth after he had intercourse with me as much as he did, as he put it in before.

Q. He did it more before than after?

A. Yes. He usually did that when he used the rubber.

Q. In addition to putting his penis in your mouth, did he ever put his mouth on your sexual organs? [440] A. Yes, he did.

(Testimony of Charles L. Anderson.)

Q. Which did he do oftener?

A. His penis in my mouth.

Q. He did that more than putting his mouth on your sexual organs? A. Yes.

Q. Did he use his tongue on your organs?

A. Yes, he did, and his finger once in a while.

Q. Did he seem to enjoy it?

A. I guess he did.

Q. Did you enjoy it?

A. Not very often.

Q. Usually not? A. Yes.

Q. Now, did he do something like this every time he had intercourse with you?

A. Yes, he did.

Q. One or other of those things first?

A. Yes.

Q. And then intercourse? A. Yes.

Q. And once in a while afterwards?

A. Yes.

Q. Did the fluid ever go into your mouth?

A. It did that practically every time he put his penis in my [441] mouth.

Q. Then after he had the fluid go in your mouth, then he would have intercourse with you?

A. No. I mean, when—after—I mean sometimes I would be menstruating, and he would put his penis in my mouth because I couldn't have intercourse with him.

Q. Oh.

A. And he would let it go then, and, even sometimes when I wasn't, he would, but, when he had

(Testimony of Charles L. Anderson.)

intercourse, he would usually make me—he would put his penis in my mouth and make me lick it so he could put the rubber on it.

Q. Oh, he would do that first? A. Yes.

Q. Did he always use a rubber?

A. Not always.

Q. Did he usually use a rubber?

A. I guess you would say that; yes.

Q. When he didn't use a rubber, what did you do?

A. Well, he usually let that stuff go into me, and right afterwards I would go into the bathroom and wash out as best I could.

Q. What did you use to wash out?

A. Oh, one of those——

Q. Did you have a syringe?

A. Yes; I guess you would call it that. [442]

Q. You would wash it out quick so you wouldn't get pregnant? A. Yes.

Q. Were you afraid you might get pregnant?

A. Yes, I was.

Q. Did he ever say anything about the possibility that you would get pregnant?

A. No.

(Playing of the tape recording concluded, and Direct Examination of Doctor Anderson was continued by Mr. Munson as follows:)

Q. (By Mr. Munson): Was that the accurate transcription of the interview as you remember it, Doctor?

A. (By Doctor Anderson): Yes, it was.

(Testimony of Charles L. Anderson.)

Q. And on the basis of that sodium pentothal interview plus the battery of psychological tests and personal tests, observations by you, that you base your expert opinion upon? A. That is right.

Q. Now, I would like to ask you, Doctor, as a psychiatrist and as an expert witness, whether in your opinion this girl is a fabricator or a liar?

A. I don't believe she is.

Q. Do you believe that this girl is mentally deranged in any way? A. I do not. [443]

Q. Do you believe that she is, considering the circumstances under which she has lived, would you say that she is an emotionally normal, healthy, young girl of fourteen or fifteen?

A. As much as she could be under those circumstances.

Q. Would you now give a short resume of what your evaluation of this girl is and the scientific bases for your opinion?

Mr. Gilmore: We object, if the Court please. The question is too broad and vague and unintelligible.

Q. (By Mr. Munson): With reference to her mental normalcy and whether or not she is a fabricator?

Mr. Gilmore: If the Court please, I object to that upon the ground that it is repetitious. The question has been asked, and it has been answered, the same question. It is purely repetitious.

Q. (By Mr. Munson): Now, there is one further question that I would like to ask you as an expert and that is, in your opinion whether it would

(Testimony of Charles L. Anderson.)

be possible for a young girl to have made up a story of this kind with the mass of detail——

The Court: It would have to be this girl, not some other girl.

Mr. Ziegler: We object to that, if the Court please.

The Court: Objection overruled.

Q. (By Mr. Munson): Whether this girl could have fabricated a story with this enormous amount of detail of intimate knowledge of sexual matters?

A. It is inconceivable to me that she could have gained this information except from personal experience.

Mr. Munson: That is all.

Cross Examination

Q. (By Mr. Ziegler): Doctor, before you commenced this test, did you tell her what you proposed to do?

A. Yes. The evening before I explained to her the nature of the test and why I wanted to do it.

Q. She knew when she undertook to take this test that you were going to ask her certain questions?

A. I didn't tell her the questions that I would ask, but I did tell her that I was going to give her this test to see if she would tell the truth under the test, to see—I will say it differently—to tell whether she would tell the same story under the influence of the drug as she had before.

Q. Well, now, what story were you referring

(Testimony of Charles L. Anderson.)

to? The one she told the first time, or the second time?

A. Well, the story that I was referring to then was the story that she had told me the 28th of April this year.

Q. And you told her that was the story that you were going to ask her about and see if she would tell the same story? [445]

A. Also I told her that I knew she had told a different story to the attorneys and it was my purpose to find out which story was the truth.

Q. And, well, did she have any idea that you were attempting to verify the second story when she repudiated the first?

A. I don't quite get what you mean there.

Q. Well, which story did she understand, which statement did she understand that you were trying to establish as the truth?

A. I told her in essence this: "There are two stories here. I want to find out which story is true. Under the influence of this drug you are bound to tell me the truth, and I will know which one of these stories you have told me is true and which one isn't true."

Q. Well, Doctor, are you telling this jury now that a person who is under the influence of this drug is bound to tell the truth?

A. I would say that a girl her age and in her condition is bound to tell the truth.

Q. Are you willing to swear to that in this case?

A. That is my professional opinion.

(Testimony of Charles L. Anderson.)

The Court: He has taken the oath here. The question is superfluous.

Q. (By Mr. Ziegler): That is only an opinion of yours? As I understand it, that is only an opinion of yours that a [446] person would tell the truth?

A. My opinion based on some years of experience in this thing.

Q. How many years' experience?

A. Since 1941.

Q. And how many tests of this nature have you given?

A. I have never counted them, but I have given them since 1941, several of them a year.

Q. How is that?

A. Several every year since 1941, I would think.

Q. Did you ever give a test on a girl of this age before?

A. Yes. I have given them on them at her age and older and, I suppose, all ages.

Q. Now, as I understand it, in your answer to Mr. Munson you said you observed her demeanor on the stand here and where she showed emotion of sorrow and so on and so forth. That was one of the preliminary questions you were asked?

A. That is correct.

Q. Did you also observe her laughing, when you were sitting over there, when her testimony was given?

A. I have watched her as much as possible throughout the trial and looked at her frequently.

(Testimony of Charles L. Anderson.)

Q. Did you see her laughing?

A. I think I have seen her laughing, and I think I have seen her show anger. I think I have seen most of the emotions that one would go through.

Q. Now, Doctor, did you know at the time you gave this test that she had accused Mr. Krepps in Wrangell of this same thing?

A. Yes; that information had been supplied me.

Q. Well, why didn't you in giving this test ask her about that?

A. Frankly, it slipped my mind when I was testing her.

Q. Is it true, Doctor, that the object in your test in this case was to rehabilitate her story, that is, to establish the fact from an opinion standpoint that her story which she originally told was true? Was that your object?

A. No; that was not my object.

Q. What was your object?

A. My object was to find out whether or not it was true. If she had told an entirely different story under the influence of the drug, I would have reported accordingly to the D.A.

Q. Who was present when that was taken?

A. I mentioned, besides Loretta and myself, Mr. Munson was present, and Mrs. Mary Lou Truell, Psychiatric Social Worker, who works with me, and for a part of the interview Mr. James Parsons, who is a Clinical Psychologist.

Q. Did I recognize Mr. Munson asking her some questions there?

(Testimony of Charles L. Anderson.)

A. I think you did toward the end there, one or two questions.

Q. Would it have been regular if you had permitted the [448] defendant's attorneys to be present during the taking of this test?

A. That is a legal point on which I haven't any opinion.

Mr. Munson: I object, your Honor.

Mr. Ziegler: I am not asking from a legal standpoint.

The Court: I suppose he would be willing to make the test for anybody who asked him.

Mr. Ziegler: We never knew the test was made or going to be made, your Honor.

The Court: You have, you might say, accessibility to psychiatrists like anybody else.

Mr. Ziegler: Yes; but we are certainly not duty bound to do so.

The Court: Well, you don't have to, no; but, I say, if you wanted to, why, you could.

Mr. Ziegler: Well, did the Court rule out the question?

The Court: I don't know what the question is.

Mr. Ziegler: The answer?

The Court: What is the question?

Court Reporter: The last question was answered.

Mr. Ziegler: The question was——

The Court: Well, if it is answered, why, that is all there is. There is nothing before the Court.

Mr. Ziegler: I would like to get the answer, because then we started talking about it.

(Testimony of Charles L. Anderson.)

Court Reporter: A. "That is a legal point on which I haven't any opinion."

Q. (By Mr. Ziegler): Well, with reference to the propriety of it, Doctor, have you an opinion?

A. Isn't that the same as the question I just answered? I think that was the same question.

Q. Well, have you conducted tests of this kind in similar cases before?

A. I have conducted similar tests—I don't believe ever with the District Attorney present; but I wouldn't have been unwilling to have the defense attorneys there too, as far as that goes.

Q. Well, the test is finished now of course.

A. Well, there was no unwillingness on my part.

Q. All right.

Mr. Munson: Your Honor, I object to this.

The Court: I have already said that either side can employ a psychiatrist for the purpose of making a test of this kind. No one has got a monopoly on psychiatrists.

Mr. Ziegler: Well, they are very scarce in Alaska. There is only one, your Honor, and it would be pretty hard for us to get this psychiatrist away from Mr. Munson.

The Court: Well, I don't know that there is only one. [450]

Mr. Ziegler: Well, he testified so.

Mr. Munson: Well, your Honor——

The Court: Well, there are places besides Alaska. There is Seattle here, closer than Anchorage. An-

(Testimony of Charles L. Anderson.)

chorage is about nine hundred miles away from here.

Mr. Ziegler: There are some all over the States, as I understand it, too.

The Court: They are available for anybody who wants to employ them.

Q. (By Mr. Ziegler): Doctor, as I understand it from what has occurred here, the patient, Loretta, was in a sort of a twilight zone between consciousness and semi-consciousness?

A. That is correct.

Q. And you aimed to keep her in that condition?

A. Correct.

Q. Does that same condition exist from the administration of other drugs? I mean, can you keep a person in that condition you have just described by the use of other drugs?

A. With some drugs it is rather hard to do it because they will get, you know, either one side or the other of that state; but, with this drug, it is about the easiest drug to maintain that state.

Q. Well, is there any difference in the effect on the person by the use of other drugs? [451]

A. You could use ether, for example. It would be difficult to administer and hold them there, but it could be done.

Q. And you have heard people talking under ether?

A. Certainly I have.

Q. And they make a lot of funny statements, don't they?

(Testimony of Charles L. Anderson.)

A. Not always so funny, if you listen carefully to what they are talking about.

Q. I have had it myself and I know that——

A. Do you remember it?

Q. ——I was going to lick Jack Johnson.

The Court: Well, we are not here to listen to any colloquy now of that kind. We have wasted enough time here.

Q. (By Mr. Ziegler): Now, on this sodium pentothal, it affects a person physically and mentally at the same time; is that it? Do I understand that to be true? A. That is right.

Q. Now, as I recall your testimony, your opinion is this, that Loretta is not a fabricator?

A. I think my opinion was that she couldn't fabricate such a complicated story dealing with sexual matters.

Q. Do you mean to say that it would be impossible for her to have learned all these things by associating with other children, other boys, and her brother?

A. I don't believe that anybody could tell such a detailed account without having gone through with it themselves. [452]

Q. That is another opinion only?

A. My opinion; yes.

Q. Doctor, I will show you a letter in connection with your testimony and ask you to read it, a letter from Loretta addressed to "My dearest Sharon", dated March 26, 1954. I will ask you to read it before I ask you any questions about it.

(Testimony of Charles L. Anderson.)

A. (Reading document to himself.)

Q. Now, Doctor, in answer to Mr. Munson's question you stated that in your opinion Loretta is not a psychopath? A. I did; yes.

Q. After reading this letter, would you still adhere to that opinion?

The Court: Well, now, wait a minute. Who has identified that letter? I want to make sure we don't run off afield again like we have been doing throughout this trial.

Mr. Ziegler: I stated, your Honor, that it is a letter addressed to "My dearest Sharon", at least, if I didn't, I will so state, and signed——

The Court: But how has it been authenticated here or identified? It isn't in evidence.

Mr. Ziegler: Well, we will offer it in evidence and have it marked for the purpose of using it in cross-examining the witness.

The Court: It will be excluded. This witness' [453] testimony is based on the test that he made, which is before the jury, and on nothing else.

Mr. Ziegler: Well, he is assuming certain things from that test, your Honor, and from his discussion with her and has made a positive statement of his opinion with reference to the psychopathic tendency or condition of Loretta. Now, I think we should be permitted to cross examine him.

The Court: Cross examine him on his opinion as to her psychopathic condition, if any.

Mr. Ziegler: He based it on assumption of cer-

(Testimony of Charles L. Anderson.)

tain facts. Now, your Honor, if we can show other facts——

The Court: What facts did he base it on?

Mr. Ziegler: Her conduct, his tests, his discussion with her, and examination.

The Court: All right. Now you can cross examine him with reference to all those things to which he has testified.

Q. (By Mr. Ziegler): Let me ask you this question, Doctor. Assuming that on March 26, 1954, Loretta wrote a letter addressed to a girl in which she indicated herself that she was possessed or acted in an unnatural manner, now, would that affect your opinion with reference to her being psychopathic?

The Court: Never mind answering that question. I have already said that this letter, not being in evidence, [454] cannot be used for the purpose of such examination.

Mr. Ziegler: Well, if the Court please, we never could introduce this letter in evidence until this situation arose.

The Court: Why, anybody could produce a letter from somewhere, and, without having it authenticated, without having anyone assume the responsibility of authorship or anything else, why, the examination could be endless.

Mr. Ziegler: Well, if the Court please, I will ask permission to call a witness and have the letter identified.

(Testimony of Charles L. Anderson.)

The Court: The motion is denied. It is not proper cross examination of this witness.

Q. (By Mr. Ziegler): Well, Doctor, as I understand it, then you base your opinion in this matter on facts that are known to you? A. Yes.

Q. Is it true that other facts could exist which would entirely change your opinion?

A. It would have to depend on the nature of those facts.

Q. Is it possible to have existent such facts that would change your opinion?

A. This is going to be hard for me to answer that, because I know the facts you have in mind and I can't answer on that.

Mr. Munson: Your Honor, we have no objection to [455] the Doctor answering the question on the basis of what he read in that letter. They have thrown such a cloud on——

The Court: Well, I am concerned with the length of time this case is consuming.

Mr. Munson: Yes, your Honor. The Government just feels that——

The Court: This witness has testified, has given his opinion on the basis of what he observed with reference to the witness Loretta Lindsey and his questioning of her and nothing else, and, since he hasn't testified that his opinion is based on anything else, the cross examination as to anything else is improper, outside the scope of direct examination.

Mr. Ziegler: Well, if the Court please, then I

(Testimony of Charles L. Anderson.)

certainly don't see, if he is basing his testimony on opinions from what he observes, I don't see the necessity of taking all this time here in the court to run off this record.

The Court: Why not?

Mr. Munson: That was my purpose, of giving the jury an idea of what it was based on.

The Court: If once that it is permitted to sustain or corroborate a witness, you have got to put in the previous consistent statements. You can't just have somebody sum up the whole thing by saying, "Well, she made consistent statements before". The statements themselves have got to go into evidence. You can go fully into what his opinion is based on [456] without limit but you can't introduce something from the outside any more than you could a book for cross examination unless he said his opinion was based on such a book.

Mr. Ziegler: Well, I thought, your Honor, we would be entitled, if we could, to show facts which might alter the very opinion he has given in court here.

The Court: Well, if they are facts concerning this witness that came under his observation or were presumed to come under his observation in connection with making this test, why, that would all be proper cross examination.

Mr. Ziegler: It is perfectly obvious that anything of this nature wouldn't be before him on which he based his opinion in the first instance.

The Court: Well, then, it can't be cross examin-

(Testimony of Charles L. Anderson.)

ation any more than cross examination from some book by a psychiatrist upon whose book he doesn't base his opinion.

Q. (By Mr. Ziegler): Now, Doctor, you stated, as I understand it, you were impressed with and based your opinion on her demeanor and conduct here in court and the times you have seen her. Now, assuming to be a fact that, when she related to other witnesses the accusation of Mr. Krepps at Wrangell, she told it in a very jocular and laughing manner, would that have any bearing on the opinion you have now expressed?

A. It has some bearing, but it wouldn't alter my opinion. [457]

Q. It wouldn't alter it? A. No.

Q. This sodium pentothal is an ordinary anesthetic used in the hospitals all the time; it is an ordinary anesthetic? A. Yes.

Q. And do I understand that it has any more particular virtue or power in ascertaining the truth than any other drug?

A. It is largely because of its convenience of use in maintaining the individual at the right level between consciousness and unconsciousness.

Q. And that is the only additional property it has? A. That is right.

Mr. Ziegler: I think that is all, if the Court please.

The Court: Are you through with this witness?

Mr. Munson: Excuse me, your Honor.

(Testimony of Charles L. Anderson.)

Redirect Examination

Q. (By Mr. Munson): Doctor Anderson, the week that you came down here or at the time that you made this test, that interview that was just related, what were you doing down here in Ketchikan that week; do you remember?

Mr. Gilmore: We object, if the Court please. It [458] doesn't appear to be proper redirect examination.

The Court: Well, it isn't, standing alone. I suppose it is preliminary. It would certainly be nonsensical if it wasn't.

Mr. Munson: Well, your Honor, I don't know whether the remarks that were flying around between the Court and counsel were fully appreciated. I was just going to show or to try to show that Doctor Anderson——

Mr. Gilmore: Well, now he will be testifying.

Mr. Munson: Well, counsel for the defense was doing some testifying about the unavailability of this psychiatrist and I just wanted to bring out——

The Court: Well, I have already ruled that the District Attorney's Office has no monopoly on psychiatrists and that any party can employ a psychiatrist if he wishes.

Mr. Munson: I have no further examination.

Whereupon Court recessed for five minutes, reconvening as per recess, with all parties present as heretofore and the jury all present in the box, and the trial proceeded as follows:

Mr. Munson: Your Honor, I would like to clarify the status of this tape recorder. I would like to have it available to the jury in case they should want it played back during its deliberations.

The Court: Well, you mean, take it in with them [459] in the jury room? It is available the same way that any testimony is, but that is the only way in which it would be available. It can't be made any more so. It can't be singled out from all the rest of the testimony and given a preferential status.

Mr. Munson: No; I didn't mean to give it a preferential status, your Honor.

The Court: It will be available, equally available, with the rest of the evidence. Have you any more rebuttal witnesses?

Mr. Munson: No, your Honor. I believe the Government rests its rebuttal case.

Mr. Ziegler: If the Court please, at this stage of the proceeding the situation has developed where this testimony is in the nature of a surprise. We knew nothing about it, and of course are entitled to time to produce evidence from other sources, that is, from doctors, local doctors, concerning the use of this drug, and it is such an important matter we feel that we certainly are entitled to a continuance of the case for that purpose.

The Court: Well, how much continuance do you want?

Mr. Ziegler: Well, we couldn't do it today and finish the case, your Honor, and——

The Court: You can consult them and find out

what their opinions are in one hour. We will take a recess for [460] one hour but no more.

Mr. Ziegler: Well, if the Court please, in addition to that I want to state to the Court right now and to the District Attorney——

Mr. Munson: Your Honor, I am afraid that what Mr. Ziegler is going to say I would prefer to have said up at the bench.

The Court: Well, I don't know what it is going to be, but I presume——

Mr. Munson: I don't want to object after it is already out, your Honor, because I think——

The Court: Well, I presume counsel is not going to state anything that is improper.

Mr. Ziegler: I think it is very proper in view of the——

The Court: I mean in the presence of the jury.

Mr. Ziegler: ——in view of the testimony that has now occurred, taken place, and that is this, your Honor, that the defendant now offers to submit himself to a truth serum test. He not only offers it but he demands it and will pay Doctor Anderson and his staff the necessary expenses to have it done.

The Court: Well, evidently, that is a matter of afterthought.

Mr. Ziegler: It isn't an afterthought. We never [461] knew about this, your Honor.

The Court: Why, you knew about it as much as the District Attorney would know about it.

Mr. Ziegler: We never knew that such evidence was going to be introduced, your Honor.

The Court: Well, that is a commonplace occur-

rence in every trial, that one party introduces evidence that the other never dreamed of its existence.

Mr. Ziegler: This is the first experience to my knowledge in the courts of Alaska where testimony of this nature has been introduced on a trial of this kind.

The Court: Well, after all it is testimony of the kind that would be admissible in any event so long as it is offered for the purpose of sustaining or corroborating a witness who has been impeached. The only difference is that the testimony here offered for the purpose of sustaining this witness was obtained in a different method, by a different method; that is all.

Mr. Ziegler: That is correct, your Honor. But it has created a situation in our opinion which is more or less damaging because of the surprise in the offering of the testimony. If counsel had even indicated at the outset of this trial that such testimony was going to be made, and the Court will recall that in an opening statement counsel is bound to relate to the jury—— [462]

The Court: Counsel is not bound. The law is that he must make a statement and he may outline the evidence in support of it, but it is always improper for counsel to state any more than what he expects to present in his case in chief. He cannot anticipate the rebuttal, and it is improper for him to state the rebuttal because then he would be anticipating what the defense was going to bring out.

Mr. Ziegler: I merely mention that, your Honor. There was no indication at the outset of this trial

that there was going to be testimony of this nature.

The Court: Well, now, all this discussion is fruitless for this reason, that the rule that permits the receipt of evidence of this kind is operative only when the person has been impeached, and that certainly takes the defendant out of the rule.

Mr. Ziegler: Now, if the Court will permit me, I would like to make a motion for the record, and it is to this effect, that the testimony just received over the objection of the defendant was presented by use of a tape recording machine and that the defendant and his attorneys had no knowledge of the intention to offer testimony of that kind. That is the same as a surprise, and the defendant moves for a continuance of the case until Friday morning in order to enable the defendant to inquire into and, if possible, have expert testimony on the same point, and at the same time the defendant [463] offers to submit himself——

The Court: I have already held that he is not in the class to which any rule of that kind could apply because he has not been impeached. There is no use going over a thing more than once. The rule applies only to somebody who has been impeached and not to anybody else.

Mr. Ziegler: I understand that, if the Court please, but I am entitled to make the motion for the purpose of the record.

The Court: Well, if you are going to make a motion of that kind, you better put it in writing, because I am not going to have it made here before the jury.

Mr. Ziegler: Well, if the Court will allow us time to——

The Court: Well, you can submit it at the next recess, at that time.

Mr. Ziegler: As I understand it, the Court is going to take a recess for one hour?

The Court: A recess for one hour.

Mr. Ziegler: The doctors are busy, and the Court appreciates, I think, appreciates the difficulty of contacting them and going into a matter of this seeming importance in that time, your Honor, and I don't want to be unreasonable, but I do think that the situation in this case, the importance of it, warrants a continuance of the case until Friday morning [464] for the reasons stated.

The Court: I——

Mr. Ziegler: In connection with that, if the Court please, I would state this. This is Thanksgiving Eve. This case under the present condition can't possibly go to the jury until late today or this evening, and we know often times juries remain out longer than a few hours.

The Court: I am aware of all those matters. I have been aware of them from the beginning of the trial, but nobody else seems to have been aware of them. I will take a one-hour recess to enable you to consult with anybody else who may be able to give expert testimony on this subject.

Mr. Ziegler: The doctors are busy, and we will do our best, your Honor, to try to get in touch with them.

The Court: Recess for one hour.

Whereupon Court recessed for one hour, reconvening as per recess, with all parties present as heretofore and the jury all present in the box; and the trial proceeded as follows:

Mr. Gilmore: May it please the Court, we have had some difficulty because the doctors were busy. I was able to contact two local physicians and surgeons about this matter and, while they are generally familiar with it and they administer the drug of sodium pentothal, they would like the opportunity before they came into a courtroom to testify concerning [465] its efficacy as a truth serum, or it being administered in that form, an opportunity to consult some recent works on it which they have available and which they will be willing to do. I consulted with Doctor Salazar and Doctor Clarke, and they said virtually the same and both told me that, without saying what they said, that their evidence would be of course of assistance to us, along the lines that Mr. Ziegler made this request for, and that they will both be available to the defense and so testify Friday morning.

The Court: Well, I have got three or four cases set for next week, and that is my last week here, and the grand jury is reporting in Juneau on December 7th. Now, I have got to do something to obviate all these delays.

Mr. Gilmore: Well, I know that we would certainly get through with this matter Friday, your Honor, in two or three hours.

The Court: Well, I doubt whether we will be through with it Friday.

Mr. Gilmore: Well, I have every assurance, or I wouldn't say that. We have the entire day. Of course we wouldn't get through with the arguments today, now, before 5:00 o'clock.

The Court: Well, I realize that, but——

Mr. Gilmore: I know it.

The Court: But I think that without even any [466] further testimony it will take all day Friday.

Mr. Ziegler: I can't imagine it would take very long for any further testimony, your Honor.

Mr. Gilmore: It isn't the test. It is their opinions, your Honor, of the efficacy of the trustworthiness of the tests or of the use of this particular drug to elicit the truth, would be substantively what their testimony would be.

Mr. Munson: Your Honor, could I be heard at this time?

The Court: Yes.

Mr. Munson: I just read this motion of the defendant, and the second part of the motion says that they want to have time to give the defendant an opportunity to have tests made similar to that given to the prosecuting witness. Now, the counsel here just talked as if the only thing that Doctor Anderson based his examination and testimony on was the sodium pentothal test, and I think it was made quite clear that that was only a part of the——

The Court: How does that become relevant here now in this discussion?

Mr. Munson: Well, the Government would insist that the defendant, if he is going to undergo the test——

The Court: I have already held that he is not within the rule. [467]

Mr. Munson: Are we arguing this motion or——

The Court: I don't know what motion you have there.

Mr. Munson: Counsel just handed it to me.

Mr. Ziegler: Well, if the Court please, the Court requested us to file a motion in writing, of which I have served a copy on Mr. Munson.

The Court: A motion as to what?

Mr. Ziegler: A motion for time within which to prepare the testimony that we think is material in this case, your Honor.

The Court: I don't recall that I required any written motion. The rule is that a motion does not have to be in writing if it is made during the course of the trial, so it falls squarely within that rule. There is no written motion required.

Mr. Ziegler: Well, I certainly understood the Court to say, "You have to file your motion in writing".

The Court: If I said anything of that kind, it was a slip of the tongue. The only question now is when we should resume again. I am inclined to think that, because of all these other cases which have already been set for next week and the virtual impossibility of concluding them unless we get started on some case Friday afternoon, I am inclined to continue the case to 7:30 in order to conclude the evidence today so there will be nothing but arguments and the instructions [468] Friday morning.

Mr. Gilmore: Well, your Honor, the testimony, see, is—Mr. Munson just mentioned something about truth serum, which, if I am correct, and counsel, we haven't had any time to consult about this or anything like that, but it is my understanding——

The Court: Consult with whom?

Mr. Gilmore: My co-counsel.

The Court: You have had an hour. What have you done in that hour?

Mr. Gilmore: Running around to the doctors, your Honor. That took an hour.

The Court: All you need to do is to call them on the phone.

Mr. Gilmore: Well, you can't discuss those things; you couldn't get them on the phone and——

The Court: All right. Now, I propose to give you until 7:30. Is there any objection to that?

Mr. Gilmore: Well, your Honor, I would submit this, that, if we started Friday morning, if we stated at 9:30 Friday morning, the testimony will be short.

The Court: I have heard those promises before.

Mr. Gilmore: All it will be will be the doctors testifying as to their opinions of the effectiveness of sodium pentothal as a means of eliciting the truth.

The Court: Then, probably, the District Attorney wants to put Doctor Anderson back on, and the first thing you know we have gone up to noon.

Mr. Gilmore: Well, he could only rebut what the doctors said, but it would necessarily be confined to that, but I submit to your Honor that is

the only question now. Am I right about this now?

Mr. Ziegler: That is right.

Mr. Gilmore: And the testimony, your Honor, shouldn't be, in its entirety, over thirty minutes including the cross examination.

Mr. Ziegler: We will stipulate, your Honor——

Mr. Gilmore: That we won't go over that.

Mr. Ziegler: We will stipulate, your Honor, that the Court can shut it off in thirty minutes time. In other words, we will be bound not to consume more than thirty minutes of the Court's time.

Mr. Gilmore: Arguments then would commence——

The Court: You are not the only party here to be heard, you know. There is such a thing as rejoinder on the part of the District Attorney's office. Now, experience has taught me not to rely on these promises of being able to finish in an half hour or so. I have been disappointed nearly every time. It is common for counsel to underestimate by a considerable margin the time that it is going to take to [470] do anything, and I see no reason why you can't have this testimony by 7:30 tonight.

Mr. Ziegler: If the Court please, the Court realizes that these doctors have their patients in the office right up to——

The Court: They are busy all the time, I know.

Mr. Ziegler: It is hard for us to get to them. It is a hardship on them, and it is a hardship on us, to have to do that. It is a matter certainly important enough that I think no great delay will be done.

The Court: I have already said I have got four cases set next week; one of them is a murder case; I can't possibly get through with them, as I see it; and I have got to——

Mr. Ziegler: If the Court please, in a case of that kind——

The Court: ——try to make use of all available time.

Mr. Ziegler: ——in a case of that kind the Court continues cases over the term sometimes, and that can be done right here.

The Court: Well, I am not going to continue it and loaf in the meantime.

Mr. Ziegler: I don't mean the murder case, but some of the other cases that are set are not a question of a man's liberty. They are not criminal cases, and certainly [471] not as much harm would be done there as it would to a man in a criminal case.

The Court: We will recess to 7:30. Ladies and gentlemen of the jury, please bear in mind the admonition heretofore given you.

Whereupon Court recessed until 7:30 o'clock p.m., November 24, 1954, reconvening as per recess, with all parties present as heretofore and the jury all present in the box; and the trial proceeded as follows:

Mr. Gilmore: Shall we proceed?

The Court: Yes.

Mr. Gilmore: I would like to announce that in the time allowed by the Court we were able to get one of the two doctors I referred to; one is at the

hospital on an emergency; but Doctor Clarke is here, whom I would like to call now.

Defendant's Rebuttal.

JACK W. CLARKE

called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Gilmore): Will you state your name please? A. Jack W. Clarke.

Q. And what is your business, profession or occupation? A. Medical doctor. [472]

Q. And you are a graduate from a recognized medical school, are you?

A. Indiana University, School of Medicine.

Q. And what is your training following your medical?

A. A year's internship at Sacred Heart Hospital in Spokane, Washington; a year's postgraduate study in radiology at Bellevue Hospital, New York University.

Q. And your practice?

A. In Ketchikan, Alaska.

Q. Now, Doctor, are you familiar with the so-called truth serum? A. Yes.

Q. And is it a drug of some kind?

A. There are several drugs that come under the classification of truth serum—sodium pentothal, sodium amytal, any of the deep narcotic or narcosis-producing drugs.

(Testimony of Jack W. Clarke.)

Q. Are you familiar with the drug of sodium pentothal? A. Yes.

Q. And have you administered it?

A. I have given sodium pentothal for anesthesia.

Q. That is its general use, is it?

A. That is its general use at present.

Q. It is, generally speaking, an anesthetic drug; is that correct? A. Yes. [473]

Q. Now, Doctor Clarke, do you know how the general medical profession views the use of this so-called truth serum?

A. Well, generally speaking, the most accepted form, as we use, with the use of truth serum is in psychiatric cases where they have hidden neuroses and so forth. As far as using it as a matter of the truth, lying or not lying, it is not generally accepted in that category.

Q. Now, do you know, generally speaking, of what the recognized authorities in the medical field say about the use and efficacy of truth serum?

A. Yes. I mean, that is where I base my opinion, is what I read from journals that are approved and by text books written by authorities on the subject.

Q. Are you in a position now, Doctor, to give this jury the benefit of what authorities say in regard to the effectiveness of truth serum?

A. Yes. I have several journals and a text book I brought along with me.

Q. If you would please, would you cite an au-

(Testimony of Jack W. Clarke.)

thority, giving as the authority, concerning the recognition that is given to the value of the use of truth serum, which you have talked about?

A. I have several here.

Q. First identify the authority that you quote from and the page, and then proceed. [474]

A. This is the Journal of the American Medical Association, and this number here is May 29, 1954, and on page——

Q. First of all, Doctor, as preliminary to it, is this about, from which you are going to read there——

The Court: He is not going to be allowed to read. The only time that an expert witness is allowed to read from any book is on cross examination. That is a well-known rule. He can give the authority upon which his testimony is based, but he is not allowed to read from the book.

Mr. Gilmore: Well, he can state in his own words, your Honor, can he not, what the authority on the subject said?

The Court: No.

Mr. Gilmore: Can he not?

Mr. Munson: I would object on the ground of hearsay, your Honor.

The Court: There is no use of having him if you are going to have him read from a book. You might as well have the book.

Mr. Gilmore: Then can we read from the book if he points it out here?

The Court: Beg pardon?

(Testimony of Jack W. Clarke.)

Mr. Gilmore: Can we read then from this?

The Court: I said you might as well offer a book as to have him merely read from a book, but reading from a book is not permitted except in connection with cross examination. [475]

A. I can't quote it exactly but I can go ahead and say, but I can't tell you which page I am quoting from, but I can back it up.

Q. Well, that isn't important, Doctor. Just go ahead then and give us——

The Court: Well, be sure to state whether it is your opinion you are stating or the author's opinion.

Q. (By Mr. Gilmore): Well, can you state that it is your opinion and then what your opinion is based on?

A. I have already stated my opinion, Mr. Gilmore, and my opinion is that it is not reliable as to tell whether a person is telling the truth or lying, and you asked me where I got it. I get it from where I read in my medical journals and text books.

Mr. Munson: Your Honor, I object to this witness stating any more than his opinion as a physician who has practiced in the City of Ketchikan, and I object to his making any reference to hearsay authorities.

The Court: Well, he can cite his authorities but he can't read from them.

Mr. Gilmore: No.

Q. (By Mr. Gilmore): But, now, you base your opinion on your practice and the authorities just

(Testimony of Jack W. Clarke.)

like you do on your training from your medical school, don't you? A. That is right. [476]

Q. It is a combination of things.

Mr. Munson: I object to this leading, your Honor.

The Court: Well, you should object before he answered the question.

Mr. Munson: I don't believe he answered that question.

The Court: Yes, he did.

Q. (By Mr. Gilmore): They don't recognize truth serum; is that what you said, in substance?

Mr. Munson: I object, your Honor.

The Court: Objection sustained as leading.

Mr. Gilmore: Simply a summing up. Take the witness.

Cross Examination

Q. (By Mr. Munson): Doctor Clarke, you just said that you have graduated from a medical school and that you have practiced in Ketchikan. How long have you been practicing?

A. I have practiced in Ketchikan over two years.

Q. Two years. Have you practiced in the field of psychiatry? A. I practice——

Q. Have you practiced in the field of psychiatry?

A. No.

Q. When was the first time you read these authorities that you brought with you, upon which you base your opinion [477] that truth serum is not reliable to show the truth or falsity of a statement?

(Testimony of Jack W. Clarke.)

A. This I cannot answer exactly. I can give you an estimation.

Q. Well, isn't it a fact that you——

Mr. Gilmore: Well, let him answer the question.

Mr. Munson: He said he couldn't answer the question.

Q. (By Mr. Munson): Isn't it a fact that——

A. Well, I can answer it as to one year but not as to the minute or the date or the month.

Q. You mean you have read these authorities within the last year?

A. Some of these I have read—one of them, Lundy's Clinical Anesthesia, I bought that book in 1946.

Q. I didn't ask you when he wrote the book.

A. That is when I read it. That is when I bought it.

Q. Oh, you read it in 1946? A. Yes.

Q. Now, isn't it a fact, Doctor, that you just looked up these authorities within the last couple of hours?

A. For this specific thing I have looked up a couple of the recent journals.

Q. Have you ever used the truth serum?

A. To use it as for the——

Q. For an examination or an interview of a witness? [478]

A. To tell if they are telling the truth; no.

Q. I mean, for any reason, Doctor?

A. Yes.

Q. What for? A. Anesthesia.

(Testimony of Jack W. Clarke.)

Q. I mean, besides anesthesia?

A. As sedation.

Q. Besides sedation?

A. That is the main reasons.

Q. I mean, you have used it as a pure anesthetic?

A. And analgesic, or analgesia, narcosis.

Q. Have you used it, for example, have you used truth serum with a patient of yours who has amnesia, can't remember things?

A. Not in that line.

Q. Do you recognize that sodium pentothal is used for that purpose?

A. I can't answer your question yes or no.

Q. As a doctor, do you know that sodium pentothal is used to open up a mind that has become blocked psychologically to elicit something that the patient can't remember while normal?

A. May I answer you in an indirect way? It is used on psychological disorders.

Q. And are you, Doctor, are you familiar with psychological [479] disorders and psychiatry? Do you practice in that field?

Mr. Gilmore: There is two questions, and I object to it as a compound thing. He has asked two questions. Now, he doesn't know which one to answer.

The Court: Well, he is an expert witness. He can answer either one or both of them.

Mr. Gilmore: I have a right to object to the form of the question.

(Testimony of Jack W. Clarke.)

The Court: This is an intelligent witness who is here as an expert. If he doesn't like the form of the question, he can say so.

A. It is hard to answer it yes or not. When you are a doctor and you practice in general practice, you practice all fields of medicine. I am not a——

Q. Even psychiatry, Doctor?

A. Goodness, yes; psychosomatic medicine, which is considered——

Q. I am not talking about psychosomatic medicine.

A. That is a field of psychiatry.

Q. I am talking about mental psychiatry.

A. Yes. You get a certain element of all branches of medicine in general practice, but I am not a psychiatrist or specialize in the field.

Q. And your whole experience with sodium pentothal has been merely as a physician rather than as a psychiatrist? [480]

A. Certainly.

Q. Well, then, Doctor, how do you know, how can you say that a patient who is under the influence of sodium pentothal would or would not be so relaxed mentally that he would not tell the truth? Have you had any experience with a patient like that?

A. Yes and no. I have had patients come, and that was before today in this particular case, and ask about it.

Q. Well, I am not asking you that.

A. And ask if I would use it, and I have then looked up in medical books, not only in that but in

(Testimony of Jack W. Clarke.)

anything. I mean, I try to keep up to date, and that is where I get my opinion. I don't think it is reliable.

Q. In other words, it isn't your opinion based on experience; it is just your opinion from reading these journals; is that right?

A. Those and other medical books.

Q. In other words, you yourself have had no personal experience with the use of sodium pentothal or sodium amytal or any of the other truth serums to show the ability of these drugs to open up the human mind?

A. Yes, I have.

Q. Now, would you tell me what those experiences are?

A. Yes. In medical school——

Q. Not in medical school. In practice. [481]

A. All right. O.K. Internship at psychiatric, as part of your psychiatric training you are given, or you are—I don't know just how to say it, but it is part of your training in your observing psychiatrists, and it has been used, and I have been in the room and part of the team, as you want to call it, using it.

Q. You mean you base your opinion now on what you have observed other psychiatrists doing while you were an interne?

A. No, I don't base my opinion on that.

Q. Well, isn't that what you just said?

A. You asked if I had ever used it or been in to see it.

Q. I asked you if you had ever used it for that purpose.

(Testimony of Jack W. Clarke.)

A. I have told you I have been in on the use of it, but I did not——

Q. You didn't say that you used it. You just said that you were there watching other psychiatrists.

A. That is right.

Q. Have you ever used it yourself?

Mr. Gilmore: The question has been asked and answered, if the Court please, and I object on the ground that it is repetitious, and he is kind of badgering the witness. The same question has been asked three times and answered.

The Court: Well, on the other hand, the witness doesn't exactly answer the question asked. As I understand, the question is not whether he has used it under supervision [482] or merely observed its use but whether he has used it himself in the course of practice. Is that it?

A. As a psychiatrist? Is that what you asked me?

Q. Well, you just said you were not a psychiatrist. I couldn't ask that question.

A. Well, in psychiatric disorders.

Q. Have you ever conducted a sodium pentothal interview with a patient?

A. Yes.

Q. When?

Mr. Gilmore: What is the materiality of the time, if the Court please—that is what I would like to know—as long as he did it?

The Court: Because he doesn't believe him, apparently, and so it is proper cross examination. He is not bound by the answers of a witness.

(Testimony of Jack W. Clarke.)

Mr. Gilmore: But, the time, couldn't he say any time?

The Court: He is asking him to state the time.

Mr. Ziegler: If the Court please, I would like to just interpose here—who said—or what basis is there for saying the District Attorney don't believe the witness?

Mr. Gilmore: Yes; that is right.

The Court: I say that is evidently the reason that he is asking him "When". It is proper cross examination. [483]

Q. (By Mr. Munson): When did you conduct this interview, this sodium pentothal interview?

A. I did not give it for the sole purpose of a sodium pentothal interview, but I——

Q. Then you haven't given a sodium pentothal interview, have you?

A. I have given a sodium pentothal interview, but it is for other reasons other than just to interview them. They are excitable. You are trying to sedate them, quiet them down, and then, when you get them down, then go ahead and try to ask them a few questions, but I did not say, "I am going to give you this with the idea that you will tell me what is bothering you; you will tell me the truth." That I cannot——

Q. I didn't ask you that, Doctor.

A. Then I would—what did you ask me?

Q. I asked if you ever conducted a sodium pentothal interview.

A. To answer that, I would say no then.

(Testimony of Jack W. Clarke.)

Q. Well, you just said, Doctor, that you gave this, you gave sodium pentothal, in order to quiet the patient down? A. Yes.

Q. In other words, you gave it to him to lower his stress? A. Excitement.

Q. His excitement? [484]

A. Yes.

Q. And then you asked him questions?

A. That is right.

Q. Now, isn't it a fact, Doctor, that it is recognized in the profession that sodium pentothal does relieve inhibitions on the mind?

A. Certain inhibitions; yes.

Q. How about the inhibition to fabricate?

A. The profession does not—there is no agreement in the medical profession that it will relieve—how did you state it—the tendency to lie or to tell the truth.

Q. Well, how do you know that? From these journals?

A. Journals; talking with other doctors.

Q. But what has your experience been, Doctor? You are up here as an expert.

A. I am not an expert. I am a general practitioner in the field of medicine and people—

Q. In other words, you are not an expert on the use of sodium—

A. Of course not. I am not an expert in anything.

Q. Are you an expert in the use of sodium pentothal interviews?

(Testimony of Jack W. Clarke.)

A. I am not an expert in anything in the line of medicine.

Q. Then how can you say that a sodium pentothal interview is not reliable? [485]

A. Because I keep up in all fields of medicine to be a general practitioner. I am not a brain surgeon, but I can tell you about brain tumors. I can advise you where to go.

Q. In other words, your opinion is based on what you have read?

A. From other experts; that is what my entire, the whole practice of medicine is.

Q. But your personal opinion is not based on personal experience; is that correct?

A. That is right; absolutely.

Q. In other words, as far as your personal experience is concerned, you don't know whether it is reliable or not?

A. From my personal experience I do not know.

Mr. Munson: No further cross examination.

Redirect Examination

Q. (By Mr. Gilmore): But the knowledge that you have acquired you have made your own, have you not, Doctor?

Mr. Munson: I object to that as leading.

The Court: Objection sustained. You have got to remember, when it is your witness, you can't ask him leading questions.

Mr. Gilmore: I beg the Court's pardon. I will [486] change the form of the question.

(Testimony of Jack W. Clarke.)

Q. (By Mr. Gilmore): Doctor Clarke, you have given your opinion now. Now, what have you—what do you base that opinion on, and, if you have acquired knowledge on this subject that you have testified about and if you have acquired it from various methods and means, such as your medical training, your internship, your practice, your reading and your studying, have you—do you now consider that knowledge of your own?

Mr. Munson: I object, your Honor. This is not proper——

Mr. Gilmore: It calls for an answer.

Mr. Munson: It does not call for a proper——

Mr. Gilmore: I don't know how I could make the question any plainer.

Mr. Munson: His answer would not be proper expert testimony, your Honor. It would merely be gathering from hearsay authorities.

The Court: Will you repeat that last question?

Court Reporter: Q. "Doctor Clarke, you have given your opinion now. Now, what have you—what do you base that opinion on, and, if you have acquired knowledge on this subject that you have testified about and if you have acquired it from various methods and means, such as your medical training, your internship, your practice, your reading and your [487] studying, have you—do you now consider that knowledge of your own?"

The Court: I consider the question unintelligible.

Q. (By Mr. Gilmore): Well, do you have a

(Testimony of Jack W. Clarke.)

formed opinion and do you have knowledge of your own now on the subject matter?

A. I have my own opinion, and my own opinion of pentothal or amytal, the truth serums, is that it is not reliable. I base that opinion on training and reading medical journals and experts in the field.

Mr. Gilmore: Thank you very much.

Mr. Munson: I move to strike that as being improper expert testimony, your Honor. It is not based on the experience of this witness.

Mr. Gilmore: It certainly is most proper, if the Court please. We resist the motion.

A. I am not an expert, Judge Folta.

The Court: Well, I think the fact that it is not based on his experience goes to the weight of his testimony.

Mr. Gilmore: That is right, and not admissibility.

Mr. Munson: Are you through, counsel?

Mr. Gilmore: Yes.

Recross Examination

Q. (By Mr. Munson): Doctor Clarke, do you know from your own knowledge as a [488] medical doctor the training that a psychiatrist goes through?

Mr. Gilmore: I object, if the Court please, as wholly immaterial and irrelevant.

The Court: Well, he already has answered that he is not a psychiatrist and he doesn't pretend to any knowledge of that type, so that it seems to me useless to ask questions of this kind.

Q. (By Mr. Munson): Well, let me clarify it this way, Doctor. The opinion that you just ex-

(Testimony of Jack W. Clarke.)

pressed is not an opinion based on any experience that you have had in the field of——

A. Personal experience.

Q. ——of forensic medicine; is that correct?

A. That is correct; personal experience.

Mr. Munson: That is all.

Redirect Examination

Q. (By Mr. Gilmore): You have never had a baby either, have you, Doctor?

Mr. Munson: I object, your Honor.

The Court: That is just frivolous. You shouldn't ask any such questions.

Mr. Gilmore: Well, if the Court please, he has got lots of other ways than personal experience to——

The Court: Obstetrics is not a part of the examination of this witness under any conceivable theory, so counsel should refrain from being facetious or frivolous.

Mr. Gilmore: It wasn't meant to be. There are no further questions. Thank you very much, and you may come down from the witness stand.

(Witness excused.)

Mr. Gilmore: As I previously announced, your Honor, the other medical authority that we expected to have here is on an emergency at the hospital and I don't think will be available.

The Court: Do you rest now?

Mr. Gilmore: Yes; and we have a motion to make if the Government rests also.

The Court: Has the Government any rejoinder?

Mr. Munson: Your Honor, during the course of this trial the defense has flashed several pieces of paper around which they have sought to introduce into evidence and which have not been introduced for one reason or another, and we feel that the Government has been prejudiced by the exclusion of these pieces of paper because the jury might get the impression that they are damaging to the Government's case.

The Court: Well, but it is not enough merely that some document were flashed. Was there any description of them given? Were they characterized in any way? [490]

Mr. Munson: Well, there was one characterization this afternoon that I would like to call your Honor's attention to. Mr. Ziegler in the examination of Doctor Anderson asked him a question based on a letter which was produced for the first time, purportedly written by the complaining witness, in which he asked, "Supposing you had known about some unnatural act by this witness, would you change your opinion?"

The Court: Well, did he indicate that the letter he had set forth something of that kind?

Mr. Munson: Yes, your Honor, he did.

The Court: Well, you may demand its production.

Mr. Ziegler: We offered it in evidence.

Mr. Munson: I would like not only the letter to be introduced into evidence but I would also like him to put the question——

The Court: Well, I thought you merely wanted

to see it. I don't see any purpose of putting in something that is irrelevant into evidence, but, if you want to see it so that you can make a further motion, why, you may do so, but I am not going to receive anything into evidence that doesn't have some probative value.

Mr. Munson: Your Honor, on reading this letter I don't see where it has any probative value and I request that counsel's remark concerning this letter be stricken as prejudicial. [491]

The Court: Let's see it.

Mr. Ziegler: The Court ruled on the objection.

The Court: I said he could examine it for the purpose of making a further motion.

(The document was handed to the Court.)

The Court: Well, as I understand it, you take the position that the statement made by counsel to which you referred a few minutes ago is the kind that is so prejudicial in character that the Court should order it stricken from the consideration of the jury?

Mr. Munson: Yes, your Honor; I do.

The Court: The motion is granted. The jury will disregard any reference made to this particular letter. Has the prosecution any rejoinder to offer here?

Mr. Munson: No, your Honor; none.

The Court: I assume that counsel understand that by Rule of Court argument is limited to an hour to a side unless the Court for cause enlarges the time. Is that sufficient for counsel in this case?

Mr. Ziegler: If the Court please, if possible, I

don't think in a case of this importance that there should be a limit.

The Court: There is a limit by rule.

Mr. Ziegler: Yes; by rule. I don't think the rule should be applied in this case. I think both sides, including [492] the Government and ourselves, should have a little more time, if it is needed, if we feel that it is needed.

The Court: Well, I realize that it is very disconcerting to have time limited. On the other hand, the reason that this rule was adopted by the Judges in Alaska is that there was a disposition, at least at times, to filibuster rather than argue, and so for self-protection the Courts have adopted that rule, and about the most I can promise counsel is that, if they do not abuse the privilege of argument, or the right of argument, that the Court will not limit them strictly to an hour but that the rule will be invoked if there is an abuse of the right. When I refer to abuse of the right, I refer particularly to repetition of immaterial things. The repetition of something that is vital or important or crucial is of course perfectly proper, not only repetition but emphasis, but that doesn't apply to a lot of these immaterial things that are sometimes argued at great length, so the Court will not limit counsel or invoke the rule unless there is an abuse of it. I rely on counsel not to abuse the right.

Mr. Ziegler: It certainly won't be intentional on our part, I can assure the Court.

The Court: Ladies and gentlemen of the jury, we are about to adjourn to Friday morning. Now,

I assume that it will be impossible to get this case to the jury before 12:00 o'clock noon. Isn't that the opinion of counsel? [493]

Mr. Munson: I believe so, your Honor.

The Court: Well, in order to select a jury for the next case, for the Madsen case, I think I will have to try to conclude this case by noon Friday. Please bear in mind at all times the admonition heretofore given you and be back in the jury box at 9:30 a.m., Friday. You may adjourn court to 9:30 a.m., Friday.

Mr. Ziegler: If the Court please, pardon me just a minute. After the jury goes Mr. Gilmore wants to make a motion.

The Court: The jury may retire now.

(The jury retired from the courtroom.)

Mr. Gilmore: May it please the Court, under the appropriate rule we of the defense now make a motion that Count VII of the Indictment be dismissed for the reason that the evidence adduced at the trial is insufficient to sustain the allegations in the Indictment, as your Honor well knows, which charges that the defendant Rolland Lindsey corruptly endeavored to influence the witness Loretta Lindsey. We feel that the evidence is all in now, and, without reviewing any of it, is is clear in your Honor's mind, and I feel that this defendant is entitled to have this Indictment stricken, I mean, this Count of the Indictment stricken.

Your Honor remembers that they walked down from the house. Even the witness that is supposed to have been [494] corruptly influenced testified she

wasn't influenced, nor she wasn't coerced on the way down, and the defendant himself described the circumstances of their walking from the house down, and the mother while they were there at the Lindsey home, and then the transactions that took place after they were there with Mr. Ziegler then, and we have them leaving the law office at 11:00 or 11:30 in the morning, going their separate ways; that is the undisputed testimony; and then coming back and then signing the statement. Not only is there not any evidence of corruptly endeavoring to influence the witness but there hardly existed the occasion, your Honor, with the possible exception of the times that were spent walking from the Lindsey home down to the law offices of Ziegler, Ziegler & Cloudy, so I think that in all fairness and justice this seventh count of the Indictment, because of insufficiency of the evidence in support of it, should now be dismissed and not presented to the jury.

The Court: I don't know whether the prosecuting witness testified that she was not influenced or not, but the crime is completed when there is an endeavor made, not when anybody is influenced, and the testimony stands as to what she said the defendant told her to say in accounting for the condition of her privates as disclosed by the medical examination. That alone would be sufficient. There is some more evidence from which it could be inferred, or it may be even stronger [495] than that, because my recollection is that she testified that the defendant suggested some of the answers

to her in the interview at the office, and that in my opinion is sufficient to go to the jury on the question whether the defendant endeavored to influence the prosecuting witness, so the motion is denied.

Mr. Gilmore: We don't have to take an exception?

The Court: No.

Whereupon Court adjourned until 9:30 o'clock a.m., November 26, 1954, reconvening as per adjournment, with all parties present as heretofore and the jury all present in the box; whereupon the following proceedings occurred:

The Court: As I understand it, have counsel for the defense agreed on how they were going to split their arguments?

Mr. Ziegler: As the best we can, your Honor. We certainly won't try to be too repetitious.

The Court: I just don't want to hear two duplicating arguments, that is all, and I don't think that that should be done. I realize that some duplication will perhaps be unavoidable, but counsel can see that it is just an imposition to have one counsel make substantially the same argument as the other. With that understanding the United States Attorney may make his opening argument.

Whereupon Mr. Munson made the opening argument to [496] the jury on behalf of the Government; Mr. Gilmore made the opening argument to the jury on behalf of the defendant, and Mr. Ziegler made the closing argument to the jury on behalf of the defendant; and thereupon Court recessed until 1:30 o'clock p.m., November 26, 1954, recon-

vening as per recess, with all parties present as heretofore and the jury all present in the box; whereupon Mr. Munson made the closing argument to the jury on behalf of the Government; and thereafter respective counsel were furnished copies of the Court's Instructions to the Jury, and the Court read his Instructions to the Jury; and the following proceedings occurred:

The Court: Now, when I mention court hours being between 9:00 a.m. and 5:00 p.m., I perhaps should add that the Court will receive your verdict up to 5:00 p.m. tomorrow, if you should be out that late, although it is a half-holiday, but, as I say, the Court will receive your verdict, as though it was a regular working day, before 5:00 p.m., otherwise it will be a sealed verdict. Are there any exceptions?

Whereupon respective counsel and the court reporter approached the bench, out of the hearing of the jury, and the following occurred:

Mr. Ziegler: For clarification, Instruction No. 12----

Mr. Gilmore: Page 12, your Honor.

Mr. Ziegler: In this paragraph, the defendant requests the Court, where the word "his" is used, to say "his [497] or her".

The Court: I have instructed the jury repeatedly that the masculine includes the feminine. I will do so again.

Mr. Gilmore: We would appreciate it, so we are sure they know what it means. We know.

Mr. Ziegler: Instruction 8-A on Page 13-A, de-

fendant objects to the instruction for the reason that it is based on introduction into evidence of the actual statements made while the prosecuting witness was under the alleged influence of the truth-serum drug. Is there anything else?

Mr. Gilmore: No; I have nothing else.

Mr. Ziegler: And that the evidence upon which the instruction is based was erroneously admitted by the Court.

The Court: I think you already have that in.

Mr. Ziegler: Yes. While we are here, if the Court please, with respect to this tape recording, I didn't understand the Court's ruling.

The Court: It doesn't go into the jury room.

Mr. Ziegler: Just so that is understood.

Whereupon respective counsel and the court reporter withdrew from the bench and were again within the hearing of the jury, and the following occurred:

The Court: Ladies and gentlemen of the jury, as you have previously been instructed, don't forget that the use of the masculine gender includes the feminine. Whenever you run across [498] the pronoun "he" in the instruction, that includes the feminine and vice versa, so don't be misled by the fact that the masculine gender is used in a way that might seem to be inappropriate in that particular case, because one includes the other, and that is as a result of the law of Alaska as well as most jurisdictions. The singular includes the plural and vice versa, and the masculine includes the feminine and vice versa.

Whereupon the bailiffs were duly sworn to take charge of the jury, and the jury retired to the jury room at 2:30 o'clock p.m. in charge of the bailiffs to deliberate upon a verdict.

(End of record.)

[Endorsed]: Filed March 1, 1954.

[Title of District Court and Cause.]

COURT'S INSTRUCTIONS TO THE JURY

Be It Remembered, that on the 26th day of November, 1954, court having reconvened at 1:30 o'clock p.m., at Ketchikan, Alaska, the above-entitled cause on trial before a jury; the Honorable George W. Folta, United States District Judge, presiding; the Government appearing by Theodore E. Munson, United States Attorney, and C. Donald O'Connor, Assistant United States Attorney; the defendant appearing in person and by A. H. Ziegler and Patrick J. Gilmore, Jr., his attorneys; the jury all present in the box; respective counsel having presented their arguments to the jury; thereafter respective counsel were furnished copies of the Court's Instructions to the Jury, and the Court read his Instructions as follows:

No. 1

The Court: Ladies and Gentlemen of the Jury:

We have now reached the point in the trial of this case where it becomes the duty of the Court

to instruct you as to the law that will govern you in your deliberations upon the facts of this case.

You were accepted as jurors in reliance upon your answers to the questions asked you concerning your qualifications. You are just as much bound by those answers now and until you are finally discharged from further consideration of this case as you were then. The oath taken by you obligates you to well and truly try this case and a true verdict render according to the law and the evidence, without allowing yourselves to be swayed by passion, sympathy, prejudice or like emotion.

It is not for you to say what the law is or should be regardless of any idea you may have in that respect. It is the exclusive province of the Court to declare the law in these instructions, and it is your duty as jurors to follow them in your deliberations and in arriving at a verdict.

On the other hand it is the exclusive province of the jury to declare the facts in the case, and your decision in that respect, as embodied in your verdict, when arrived at in a regular and legal manner, is final and conclusive upon the Court. Therefore, probably the greater ultimate responsibility in the trial of the case rests upon you, because you are the triers of the facts. [1*]

No. 2

Count I of the indictment charges that on or about October 22, 1951 at Ketchikan, the defendant had sexual intercourse with Loretta Lindsey, then

* Page numbering appearing at foot of page of original Court's Instructions to the Jury.

and there under the age of 16 years. The crime charged is known in law as rape.

Count II is identical except that the time of the commission of the alleged crime is stated to be on or about October 23, 1952.

Count III is also identical, except that the crime is alleged to have been committed on or about February 27, 1954.

Count IV charges that on or about October 22, 1951, at Ketchikan, the defendant had unnatural carnal copulation by means of the mouth with the said Loretta Lindsey. This charges the crime of sodomy.

Count V is identical except that the crime of sodomy is alleged to have been committed on or about October 23, 1952.

Count VI is identical except that it alleges the commission of the offense of sodomy on or about February 27, 1954

Count VII charges that on or about August 25, 1954, at Ketchikan, the defendant corruptly endeavored to influence a witness of this court, to wit, Loretta Lindsey.

You will note, therefore, that Counts I and IV charge the commission of the crimes of rape and sodomy on October 22, 1951; Counts II and V charge the commission of the crimes of rape and sodomy on or about October 23, 1952; and Counts III and VI likewise charge the commission of the crimes of rape and sodomy on or about February 27, 1954. In other words, it is [2] alleged that both

crimes were committed at the same time and place in each of the three instances referred to. [3]

No. 3

The crime of rape consists of having sexual intercourse with a girl under the age of 16 years with her consent.

In this connection you are instructed that a girl under the age of 16 years can not consent to sexual intercourse because the law makes her incapable of consenting to such an act. In other words, the law resists for her.

The essential guilt of rape consists of the outrage to the person and feelings of the female involved. Therefore, the law does not require proof that the act of intercourse was fully consummated or that there was penetration into the vagina. If the proof shows beyond a reasonable doubt that there was any penetration, however slight, of the female parts, even though there was no emission or discharge, that is sufficient to constitute rape if the other requisite facts are present.

As to each count of the indictment charging rape, you are instructed that the essential elements, each of which must be proved beyond a reasonable doubt before the defendant may be convicted of the crime of rape charged in the particular count under consideration, are (1) that at or about the time and place charged, the defendant had sexual intercourse with Loretta Lindsay; (2) that he was then and there of the age of 16 years or over, and (3) that

she was then and there under the age of 16 years.

The crime of sodomy is defined as follows:

“That if any person shall commit sodomy, or the crime against nature, or shall have unnatural carnal copulation by means of the mouth, or otherwise, either with beast or mankind of either sex, such person, upon conviction thereof, shall be punished.”

Carnal copulation means sexual connection. [4]

The crime charged in Count VII is defined by law as follows:

“Whoever corruptly, or by threats or force, or by any threatening letter or communication, endeavors to influence, intimidate, or impede any witness, in the District Court of the District of Alaska * * * shall, upon conviction, be fined * * * or imprisoned * * *”

“Corruptly” means with improper motive.

This statute is intended to protect witnesses and also the administration of justice.

The essential elements of this offense, each of which must be proved beyond a reasonable doubt before the defendant may be convicted, are (1) that at or about the time and place stated the defendant endeavored to influence a witness in this court, (2) corruptly, and (3) that he then and there knew, or believed, or had reasonable grounds for believing, that she was or would be, a witness.

It is undisputed that the crimes, if committed, were committed at or about the times and place alleged, and as to the crime of rape charged in the first three counts of the indictment it is undisputed that the defendant was then and there over, and

Loretta Lindsey was under, the age of 16 years; and as to the last count of the indictment, charging the defendant with corruptly endeavoring to influence Loretta Lindsey as a witness, it is undisputed that Loretta Lindsey was then and there a witness in this court and that the defendant knew that she was such a witness. Therefore, the only question remaining for your consideration under the rape counts is whether the defendant had intercourse with Loretta Lindsey, and under the sodomy counts, whether the defendant had unnatural carnal copulation with Loretta Lindsey; and under the 7th count, whether he corruptly endeavored to influence her as a witness. [5]

The testimony relied upon by the prosecution in support of Count VII is that given by Loretta Lindsey, that the defendant, on or about the time alleged, suggested that she should say or testify that she had been using a banana for the purpose of masturbation in order to account for the condition of her privates discovered upon a medical examination, and also that the defendant suggested answers to questions asked her in the office of the defendant's attorney. [6]

No. 4

As to any one of the counts charging rape, you are instructed that if you find from the evidence beyond a reasonable doubt that the defendant had sexual intercourse with Loretta Lindsey as charged in any of such counts, you should find him guilty thereof. But if, as to any one count, you do not so

find or have a reasonable doubt thereof, you should acquit him under such count.

As to the crime of sodomy charged in Counts IV, V and VI, you are instructed that if under any of these counts you find from the evidence beyond a reasonable doubt that the defendant had unnatural carnal copulation by means of his mouth with the said Loretta Lindsey, you should find him guilty accordingly. But if, as to any one count, you do not so find or have a reasonable doubt thereof, you should acquit him under such count.

As to the charge in Count VII, if you find from the evidence beyond a reasonable doubt that at or about the time charged, the defendant corruptly endeavored to influence Loretta Lindsey as a witness by suggesting to her what she should testify in court, or what statements she should make concerning any of the charges, you should find him guilty. But if you do not so find, or have a reasonable doubt thereof, you should acquit him under that count. [7]

No. 5

The burden of proving the offenses charged beyond a reasonable doubt is on the prosecution. Whether this burden of proof is sustained is to be determined by you from all the evidence in the case, and not merely from the evidence introduced on behalf of the prosecution. [8]

No. 6

You are also instructed that the opening statements and the arguments of counsel are not evi-

dence, and they are not binding upon you. You may, however, be guided by them if you find that they are based on the admitted evidence and appeal to your reason and judgment, and are not in conflict with the law as set forth in these instructions. [9]

No. 7

You are to consider these instructions as a whole. It is impossible to cover the entire case with a single instruction, and, therefore, you should not single out one particular instruction and consider it by itself.

Your duty is to determine the facts of the case from the evidence submitted, and to apply to these facts the law as given to you by the Court in these instructions. The Court does not, either in these instructions or otherwise, wish to indicate how you shall find the facts or what your verdict shall be, or to influence you in the exercise of your right and duty to determine for yourselves the effect of evidence you have heard or the credibility of witnesses.

No. 8

Subject to the law as contained in these instructions, you are the exclusive judges of the credibility of the witnesses and of the effect and value of the evidence. Evidence includes not only all the facts testified to or established by the exhibits, but also all reasonable inferences which may be deduced therefrom. What facts have been proved and what inferences may be deduced therefrom is for you to determine. The term "witnesses" as used in this instruction includes the defendant.

You are, however, instructed that your power of judging the effect of evidence is not arbitrary but is to be exercised by you with legal discretion and in subordination to the rules of evidence. Evidence is to be estimated not only by its own intrinsic weight but also according to the evidence which it is in the power of one side to produce and of the other to contradict and, therefore, if weaker and less satisfactory evidence is offered when it appears that stronger and more satisfactory evidence was within the power of the party offering it, such evidence should be viewed with distrust.

You are not bound to find in conformity with the declarations of any number of witnesses which do not produce conviction in your minds against a less number or against a presumption or other evidence satisfying your minds. This rule of law does not mean that you are at liberty to disregard the testimony of the greater number of witnesses merely from caprice or prejudice or from a desire to favor one side as against the other. It does mean that you are not to decide an issue by the simple process of counting the number of witnesses who have testified on opposing sides, and that the final test is not in the relative number of witnesses, but in the relative convincing force of the [11] evidence. The direct evidence of one witness whom you find to be entitled to full credit is sufficient for the proof of any fact in this case.

In determining the credibility of witnesses and the weight to be given their testimony, you should decide what testimony is to be believed in the same

way as you would decide whether to believe something told you out of court. You size up the witness in court in the same way as an informant out of court, observe his appearance and demeanor, note his intelligence, whether he is candid and fair or evasive, whether he has an interest in the outcome of the trial, what motive he may have for testifying as he did, the opportunity he had to observe or learn or remember the facts to which he testified, the probability or improbability of his testimony, his bias or prejudice against or inclination to favor either party, his character as shown by the evidence, the extent to which he is corroborated or contradicted and all the other facts and circumstances which shed light on his credibility and the weight of his testimony.

A witness may be impeached by evidence affecting his character for truth, honesty, or integrity, or by contradictory evidence. A witness may also be impeached by evidence that at other times he has made statements inconsistent with his present testimony as to any matter material to this case; or by proof that he has been convicted of a crime. However, the impeachment of a witness does not necessarily mean that his testimony is completely deprived of value or that its value is destroyed in any degree. The effect, if any, of the impeachment upon the credibility of the witness is for you determine. A witness wilfully false in one part of his testimony may be distrusted in other parts. Discrepancies in a witness' testimony or between his testimony and that of other witnesses, if any, [12]

do not necessarily mean that the witness should be discredited. Failure of or a mistaken recollection is a common experience. It is a fact, also that two persons witnessing an incident or a transaction rarely agree on the details especially with regard to time, distance, etc. You should not, therefore, be misled by discrepancies in unimportant matters or in testimony which is immaterial to the issues. But a wilful falsehood always is a matter of importance and should be seriously considered. Whenever it is possible you will reconcile conflicting or inconsistent testimony, but where it is not possible to do so, you should apply the tests stated and give credence to that testimony which, under all the facts and circumstances of the case, appeals to you as the most worthy of belief.

You are not bound to believe something to be a fact merely because a witness has stated it to be a fact, but you are to determine the fact by applying the tests stated in this instruction. And where the testimony on behalf of the prosecution is in direct conflict with that of the defendant or his witnesses, you are not to throw up your hands and conclude that the evidence is evenly balanced or the case not proved, but it is your duty to determine on which side the truth lies, not only by applying the tests given you in these instructions, but particularly by determining what motive the witnesses for the prosecution on the one hand had for testifying as they did, and what motive the defendant or his witnesses had for testifying as they did. **In other** words, you should ask yourselves, on the one hand,

whether the witnesses for the prosecution had any motive to lie and falsely accuse the defendant, and on the other hand, whether the defendant or those testifying to the opposite had any motive to deny the charge or testify falsely, and determine which side is to be believed.

Finally, you may, in determining any question, resort to the sound common sense and experience which you use in the ordinary affairs of life. Also, in addition to drawing inferences and conclusions from the evidence you may consider such matters of common knowledge as are not open to dispute. [13]

No. 8-A

You are instructed that a witness may be impeached by proof that before testifying he made statements inconsistent with, or contradictory of, his testimony. But he may also be sustained or corroborated and the impeachment overcome by evidence that at some time prior to the making of the inconsistent or contradictory statements, he has made statements consistent with his testimony. In this case evidence consisting of four letters and a sworn statement, has been introduced to show that the witness Loretta Lindsey has previously made statements inconsistent with, and contradictory of, her testimony. To rebut or overcome this evidence, and to sustain and corroborate this witness, evidence was introduced to show that the witness, while under the influence of a drug which it is contended rendered her powerless to lie, made statements identical or consistent with her testimony.

As to all this evidence you are instructed that if you find that the four letters and the sworn statements are untrue, or the statements in them were falsely made, you should disregard them. But if you find to the contrary, you will then determine whether she has been impeached, and in this connection you are instructed that you may find that she has or has not been impeached. If you find that she has been impeached, you will then consider whether she has been sustained or corroborated by the statements made by her while under the influence of the drug referred to. Before such statements may be considered by you, however, you must find that they were made while she was under the influence of the drug referred to and that the effect of the drug was such as to make lying impossible or highly improbable. If you so find, you will then determine whether this evidence is sufficient to overcome or rebut the effect of the four [13A] letters and the sworn statement. If you find that it is sufficient, you will disregard the impeaching evidence, and give the remainder of her testimony such weight and value as you think it is entitled to in conjunction with all the other evidence. If, however, you find that the evidence of the statements made by her while under the alleged influence of the drug referred to is insufficient to overcome or rebut the effect of the impeaching evidence or that such statements are false, and further find that she has been impeached, you may disregard her testimony, but you are not required to do so, and you may give her testimony such weight and value as

you think it entitled to, considered in conjunction with all the facts and circumstances in evidence.

In this connection, however, you are cautioned that the evidence of what Loretta Lindsey said while undergoing the truth-serum test is not substantive evidence that the defendant committed any of the crimes charged. It was admitted for the purpose of sustaining or corroborating the witness Loretta Lindsey. In other words, it was introduced to overcome or rebut or neutralize the impeaching effect of the four letters and the sworn statement. If this impeaching evidence had not been introduced into the case, the results of the truth-serum test would not have been admissible. [13B]

No. 8-B

Duly qualified experts may give their opinions on any question in controversy. In this case two witnesses have given opposing opinions as to the efficacy of the drug used in the test made upon Loretta Lindsey to produce such a condition of the mind as to make lying impossible or highly improbable. To assist you in deciding this question you may consider the opinions of the two witnesses referred to, with the reasons stated by each in support of his opinion. You are not bound to accept the opinion of any expert as conclusive, but you may give it such weight as you find it entitled to. You may disregard any such opinion if you find it to be unreasonable. [13C]

No. 9

The law presumes every person charged with crime to be innocent and, hence, the defendant is

entitled to the benefit of this presumption until it has been overcome by evidence beyond a reasonable doubt. This rule as to the presumption of innocence is a humane provision of the law intended to guard against the conviction of innocent persons, but it is not intended to prevent the conviction of any person who is in fact guilty or to aid the guilty to escape punishment. [14]

No. 10

A reasonable doubt is not just any vague, fanciful or imaginary doubt, but one that arises after a careful consideration of all the evidence or from a lack thereof. It is a doubt based on reason, and not on a bare possibility of innocence, or on sympathy or a desire to escape from an unpleasant duty. Everything relating to human affairs and depending on human testimony is open to some possible doubt, and this is true of guilt.

If after carefully analyzing, comparing and weighing all the evidence, you have a settled conviction or belief of defendant's guilt, amounting to a moral certainty, such as you would be willing to act upon in matters of the highest importance relating to your own affairs, then you have no reasonable doubt. [15]

No. 11

I also instruct you that you should not concern yourselves with the matter of punishment. That is the exclusive concern of the Court. You are not responsible for the consequences of your verdict but only for its truth so far as the truth is determinable by you. [16]

No. 12

Jurors are impaneled for the purpose of agreeing upon a verdict, if they can conscientiously do so, so that there may be an end to litigation. In each case the verdict must be unanimous. But while the verdict should represent the opinion of each individual juror, it by no means follows that opinions may not be changed by conferences and discussion in the jury room. It is not intended that a juror should go to the jury room with a fixed determination that the verdict shall represent his opinion of the case at that moment. Nor is it intended that he should close his ears to the arguments of other jurors. The very object of the jury system is to secure unanimity by a comparison of the views of, and by discussion and argument among, the jurors themselves. Hence, while no juror should yield a sincere conviction founded upon the evidence and the law as laid down in these instructions merely to agree with the jury, every juror, in considering the case with fellow jurors, should lay aside all undue pride and vanity of personal opinion and listen, with a disposition to be convinced, to the opinions and arguments of the others and a desire to get at the truth in order that a just verdict, representing the judgment of the entire jury, may be reached.

Accordingly, no juror should hesitate to change the opinion he has entertained or expressed, if honestly convinced that such opinion is erroneous, even though in so doing he adopts the views and opinions of other jurors. But before a verdict of guilty can

be rendered, each of you must be able to say, in answer to your individual conscience, that you have arrived at a settled conviction, based upon the law and the evidence of the case and nothing else, that the defendant is guilty. [17]

No. 13

The law makes the defendant in a criminal action a competent witness. In determining his credibility, you have a right to take into consideration the fact that he is the defendant and is interested in the outcome of this trial. This interest is of a character possessed by no other witness and is therefore a matter which may seriously affect the weight and credit to be given his testimony, and one which should be seriously considered by you in determining what weight you will give his testimony considered in connection with all the other evidence. [18]

No. 14

Upon retiring to your jury room you will select one of your number foreman, who will speak for you and sign the verdict unanimously agreed upon.

You will take with you to the jury room these instructions, together with the exhibits except the tape record and one form of verdict. If you find the defendant guilty, you will draw a line through the blank space before the word "guilty," but if you do not so find, you will write the word "not" in such blank space.

If you agree upon a verdict during court hours,

that is between 9 a.m. and 5 p.m., you should have your foreman date and sign it and then return it immediately into open court in the presence of the entire jury, together with the exhibits and these instructions. If, however, you do not agree upon a verdict during court hours, the verdict, after being similarly dated and signed, must be sealed in the envelope accompanying these instructions. The foreman will then keep it in his possession unopened and the jury may separate and go to their homes, but all of you must be in the jury box when the Court next convenes at 10 a.m. when the verdict will be received from you in the usual way.

(From this point on the proceedings appear in the Reporter's Transcript of Record" commencing at Line 12 on Page 497, et seq.)

(End of Record.)

[Endorsed]: Filed March 30, 1955.

[Title of District Court and Cause.]

REPORTER'S TRANSCRIPT OF ARGUMENTS TO THE JURY

Be It Remembered, that on the 26th day of November, 1954, court having convened at 9:30 o'clock a.m., at Ketchikan, Alaska, the above-entitled cause on trial before a jury; the Honorable George W. Folta, United States District Judge, presiding; the Government appearing by Theodore E. Munson, United States Attorney, and C. Donald O'Connor, Assistant United States Attorney; the defendant appearing in person and by A. H. Ziegler and Pat-

rick J. Gilmore, Jr., his attorneys; the jury all present in the box; whereupon Mr. Munson made the opening argument to the jury on behalf of the Government as follows:

Mr. Munson: If the Court please, ladies and gentlemen of the jury, you have heard all the evidence in the case. Day before yesterday you heard the last. What you are going to hear now from me and from counsel for the defense is merely argument about the evidence as to what the evidence is and what it proves and what the attorneys themselves think about it. It is up to you to decide what the evidence and what the truth really is.

Now, I would like to begin by refreshing your memory as to the Government witnesses' testimony. You will recall that the first witness for the Government was Loretta Lindsey, a fifteen-year-old child, the complaining witness. She testified substantially that at the age of seven years she was brought into the Lindsey home; she wasn't adopted at that time; she was brought there to live; and that shortly after she came there this defendant began this cold, calculated course of seduction and debauchery. He began by using his fingers on her private parts, and then shortly thereafter, perhaps a year later, he began oral exhortation of this child, and at the age of nine introduced her into the delicate art of sodomy by having her commit sodomous acts upon him.

She testified that when she was nine years old, or approximately nine years old, he called her up one day, or called up his wife, and had Loretta

come down to his boat, which was then tied up at the New England Fish Company, and that Robert was there, and he sent Robert downtown for a pane of glass to be put on the boat; that Robert went downtown, and when he returned the boat was out in the harbor, out in the channel, rather. Where it was in the channel is completely immaterial. Loretta tells us that, while she was aboard the boat, the defendant tried to have intercourse with her and failed, and that from that time until October 22, 1951, he made other attempts at intercourse which failed, but that in lieu of intercourse he continued to have sodomous acts with her, and in which he was the active partner, abusing her, and in which he forced her to take his penis in her mouth, and during that time he was actually going to orgasm with her.

And then on October 22, 1951, she testified, around that date, he was successful. He was finally successful in having intercourse with her. She was twelve years old at that time. And she remembers this day because it was the day on which the first Lindsey child was born. She knows quite a bit about the Lindsey children because she helped raise them, and that day means something to her. And after that she had intercourse with the defendant or the defendant had intercourse with her several times, but she can't remember the dates.

But she does remember again October 23, 1952, when Victoria went to the hospital again. The defendant was home alone with Loretta, and, by his own admission, he says he doesn't remember what

happened that day, but he admits that he had access. On that day he had intercourse with her again, not only intercourse on these two days but this entire pattern of sodomy and intercourse. She testified that he would first attempt to arouse her by putting his mouth and tongue on her private parts, and then after he was finished with that he would have her take his penis in her mouth, and then he would put on a rubber sheath and have intercourse with her. That was the pattern on both those days.

And on February 27, 1954, this year, when the third Lindsey child was born, again a date that she remembers, the same thing occurred, substantially the same pattern; the technique the same.

On New Years Day of this year, which was before the child was born, was another day on which the act of sodomy occurred.

Now, Loretta told this story in great detail. You can't forget it. She not only told the story but she was corroborated by practically every witness in the case.

Robert testified that, as to the Diamond T incident, that I first talked about, he said he remembers that day and remembers being sent for a pane of glass. The defendant, when he was on the stand, remembered sending him for the pane of glass. Incidentally, I would like to point out to you ladies and gentlemen that this Diamond T incident occurred six years ago or approximately six years ago, and the defendant remembers that day and he remembers sending Bob downtown for a pane of glass, but this year on New Years Day and on Feb-

ruary 27th of this year he doesn't remember anything.

On the stand there he told me. "You might as well not ask me anything about those dates. I just can't remember. You are wasting the Court's time." I ask you, ladies and gentlemen, if you were a defendant faced with charges as to particular days, if your minds would be so blank as that. I will tell you why he doesn't remember or why he doesn't want to testify from the stand as to what he remembers, because what he remembers is what he has been accused of, and he knows better than anyone else of his guilt. He would like to erase those days from his mind if he could, now that he has been brought here before you to face his peers in a trial.

Now, there was more corroboration of Loretta's story than I have just indicated. We had Don Riewold come up on the stand and testify that six months ago, seven months ago, she told him about what Mr. Lindsey was doing to her and told him about the sodomy. Florence Dalton testified to the same effect, and so did Doctor Anderson, who examined her shortly after she reported Mr. Lindsey's conduct to the proper authorities.

And then to further corroborate this child we brought Doctor Stagg and put him on the stand. And do you remember Doctor Stagg's testimony? He said that his examination of this child, which was made in early April, around the middle of April this year, showed that she didn't have just a broken hymenal ring—no—far more than that. The perineal muscles were relaxed; the vaginal walls,

relaxed; so that he was able to insert two gloved fingers without any resistance that you would normally expect to feel in a fourteen-year-old child; and that, further, when he made the examination of the vagina and the cervix, he used the largest speculum that he has; and that from the examination of this child he concluded as an expert, a doctor, that her sexual organs were as developed as an adult married woman accustomed to regular sexual intercourse.

Now, the defense put on some witnesses to refute these charges. The first one they put on was the grandmother, Mrs. Pawsey, a good, honest woman. She got on the stand and she testified to nothing that could possibly be construed as helping the defendant. When Loretta told her about these charges, she told her to keep quiet, that it was a dirty case, and that "If you go on the stand, Loretta, you will drink your tears," and she also testified that to her the family name means a great deal and that she feels strongly about her family and doesn't want any shame brought upon them and that to prevent this shame she tried to hush it up and keep Loretta from saying anything about it. And that same day—mark that, ladies and gentlemen—that same day the grandmother took Loretta out of the Lindsey home and brought her to live with her.

I would like to point out at this juncture that, when Mr. Lindsey came back from his logging camp and noticed that Loretta wasn't around the house, his wife told him that she had run away, and on cross examination, when I asked him, "Well, didn't

you know that Mrs. Pawsey, the grandmother, had taken her with her?" and he said, "No," but that that would still constitute running away in his mind. I don't know how the man thinks. Going away with the grandmother to him was running away from home.

The next witness for the defense was Pat Pawsey, another relative of the complaining witness and the son of the first witness for the defense, and he said in effect that on an unspecified date he looked upstairs in the Lindsey home for evidence but he didn't find any. Now, he didn't say what kind of evidence he was looking for, for or against the defendant; he didn't specify; he just said he found nothing; but he did say that he went up there with the grandmother. And the grandmother said she never went upstairs. There is a conflict there. I don't know who is right. I don't see that it makes much difference whose memory is the better on that.

Then another witness for the defense was the defendant's wife, Victoria, and she could contribute virtually nothing to the defense. But she did contribute a few things to the prosecution's case that I would like to point out. In the first place she admitted, reluctantly, but she admitted, that there were times when Loretta and the defendant were upstairs in this big house. That is what she called it. It is a big house. What goes on in one end of the house would not be too likely to be known in the other. She also testified that she rarely went upstairs and that she never went upstairs when Rollie

and Loretta were up there. Now, that is entirely consistent with the Government's case. She also indicated that the distance between Bob's room and Loretta's room was fairly great, which the Government believes is consistent with Bob's testimony that, when he saw Rollie go up to Loretta's room in the early morning hours, even though he was listening he couldn't hear talking. A couple of times he heard Loretta's bed squeaking, but he never heard any actual conversation.

Then Victoria gave some evidence that I think is very important. She told about Loretta's feeling toward the young Lindsey children; that she was fond of the children, and that she is still fond of the children; that she took care of them as much as Victoria did when Loretta wasn't in school, sort of a second mother; and she also said that, when Loretta came back from Wrangell, during that fifteen minutes, while Rollie was getting dressed so he could whisk Loretta down to the lawyer's office, that during that time Loretta asked to see the kids. I submit, ladies and gentlemen, that is what she was there for, to see those kids. She had been gone for several months then, in a strange place, in Wrangell, where she was unknown, and she wanted to get back here mainly to see those children and to see Victoria, her mother, and to see her friends here in Ketchikan. That is one of the crucial things in this case because it explains an awful lot of what was going on in that young girl's mind and why she did a couple of the childish things that she did do. Childish—well, she was fourteen, in the

eighth grade in school. You can't expect her to act like an adult.

And then Rolland Lindsey himself. He doesn't recall much of anything except, strangely enough, an incident that occurred six years ago on his boat. Now, why he should remember that and not remember what happened the day that his first baby was born and his second baby was born and his third baby, and why he can't remember New Years of this year, I don't know but I have a good idea why, because he doesn't want to know; he doesn't want to remember; he is afraid to give any details because he knows that he is guilty. What an uncooperative witness he was. He didn't even make an attempt to remember. He made no attempt to refresh his recollection. He just sat there and said, "There is no use asking me any questions about that day because I just don't remember anything." Well, I think that is patently ridiculous. He had six or seven months to recall those days, and he didn't even try. I submit that there is nothing in his testimony which could possibly be construed to point the way to innocence. Everything he did on the stand showed his guilt.

And then in rebuttal the Government put on the stand a psychiatrist and a medical doctor who was one of the first people to talk to Loretta after she had gotten up the courage to bring these charges. Doctor Anderson examined her on April 28th of this year, and he also examined her on around October 5th and 6th. He spent two days in October with her. And, as part of the examination that he

gave her, he used a sodium pentothal interview, commonly known as a truth serum test, to finally elicit from this child the true facts so that he would be able to get up here on the stand and give his expert opinion as to whether the girl was mentally unbalanced or a psychopathic liar, and he testified on the stand that she was neither a liar nor mentally unsound. She is far from it.

This girl has told an incredible, or, not incredible, but a detailed account of extremely intimate details involving sex, rape and sodomy. On cross examination the defendant asked if she had gotten her ideas out of mystery magazines—mystery magazines. Doctor Anderson testified that in the first place that no one who had not actually undergone these horrible experiences could ever have told a consistent story like that. It couldn't have been made up. It could not have been fabricated even by an adult, certainly not by an immature child, and certainly it could not have been fabricated out of the stuff you find in mystery magazines. You don't find sodomy, in the detail that this girl has told you about, in a mystery magazine. In fact, you don't find it in any magazine.

Now, I think you all know, ladies and gentlemen of the jury, that in cases of this kind, in which a young girl comes before you and tells about the outrages that have been done to her according to her story, that in almost every case the whole trial shifts from a trial of the defendant into a trial of the girl. The defense tries to smear her, blacken her name, and they will go to any lengths to do it.

They will even put three character witnesses up here to testify as to her poor reputation in the community when they don't even know her reputation in the community. They try to show that she made this up because she is hostile to the defendant, and, if the jury panel isn't careful to weigh what is going on, they may be beguiled into trying the girl instead of the defendant.

Now, in this case I would like to point out preliminarily that the defense never did show any hostility on the part of this girl to the defendant. There wasn't any hostility except the perfectly normal hostility of an outraged young child against her dispoiler, and even that hostility she was willing to forget about in order to avoid the shame and the humiliation of coming here before you and to get back into the family graces. There wasn't any hostility shown. She may have tried to run away from home or say she was going to run away from home, but what child hasn't done that? It is a perfectly normal incident of childhood to say something like that.

Oh, of course, the defense is going to try this girl. There is no question about it. They are going to show this statement and going to really count on this. Do you remember what the defendant said, and it was brought out so carefully by his counsel, that within fifteen minutes after Loretta arrived at his house, whisk, off they were down to the lawyer's office, and that, when they got there, both Loretta and Robert Ziegler, and the defendant himself, admitted that he was prompting her on some of these

questions. But he says, "I was just giving her some dates and names and times and places," and I went through this thing and I pointed out every date, every place, every number, and he said, "I don't remember." They were all things that Loretta would have to know, and she knows far better than the defendant knows.

And, if you look this statement over really carefully, you will see that it is really nothing more than a piece of manufactured evidence. The really damaging questions in here, or the really damaging substance in here is not in the answers that Loretta gave—she answers yes and no mostly—but in the questions that are put to her by an experienced attorney, knowing that this case was in being and was going to be presented to the grand jury within a matter of six weeks.

Now, this statement, looked at in that context, when you realize that it was made by a girl who was lonesome, who had just written the day before how lonesome she was, how she wanted to come back and forget all this, this statement begins to make a little more sense, and, when you consider who the defendant is in this case—he is her father—and when you consider also that nobody from my office or no law enforcement officer was there at the time that the defendant and an attorney got this statement from the girl, you can really begin to see what a meaningless thing it is.

You heard the defense counsel reading these letters to you with great dramatic intonation, and I would like to read them to you just exactly the way

they were meant and what the words in them really mean.

"Dear Dad, I hope you forgive me. I know it is a lot to forgive. But, my love for you and Mom and kids is too much to forget too. I have changed a lot in many ways. I will do as I'm told to do, when I come back home to my family. Love, your daughter, Loretta. Over. Oh, yes. I'm dropping the charges that I made against you."

Do you see anything in there that says that these charges weren't true? No. She says—I am dropping the charges; let bygones be bygones; let me back into the family fold. That is a sacrifice. That is not a denial of the truth of these charges.

And here is another one. "Dear Mom and Dad, I beg for forgiveness right now. I have only thought of myself"—that is the sacrifice idea coming out again—"I have only thought of myself in this matter. Dad, I hope you will forgive me. I know I made a mess of things for you and Mom and Randy and Janice and Pat." Notice that—"for you and Mom and Randy and Janice and Pat"—that is the three children. "I'm going to drop the charges that I made against you, Dad. That will mean that will be back at your house." I guess she left a word out. "I guess family love is a thing just one person can't break. I guess Mom was right when she said that I was jumping out of the frying pan into the fire." Think of that. Is that a denial? That is just like the grandmother's statement that "You will drink your tears if you go up on that witness stand. You will drink your tears. It is a dirty case."

Now we have it again, "jumping from the frying pan into the fire." "I hope bygones are bygones." Is that a denial. "I know that you and Mom were doing what you thought was right for me. I hope when I come back home I can make up for what I did. Love, your daughter."

"Dear Mom, I know just how mad you are at me. But I hope you will forgive me. I hope you can do it. I know how hard it will be." This is all childish language, certainly not the type of language you would expect from someone who could make up this sensational, detailed story of rape and sodomy. "When you made me fold clothes I got real mad." I suppose that is hostility. "I right now I would beg to do it. I hope you will forgive me for what I have done. You and Dad got me when I was a little bum." Don't forget that, ladies and gentlemen. Both Robert and Loretta got on the witness stand and told that they were grateful for having been taken in. This was the second time those two children had been adopted. Robert even said that he had no feeling of animosity towards the defendant. Of course he wasn't proud of him for what he had done to his sister, but on the over-all they both feel a certain amount of gratitude for having been taken in by this man. "And gave me a real nice home. So what did I do. Please forgive me. Love, your daughter." In fact, it emphasizes how cowardly this defendant has been, having a little child, a waif, practically, in the house and then seducing her while he has her completely under his domination, completely under his control. What could she do? She

didn't even know at seven or eight or nine that there was anything wrong with it. It wasn't until she got a little older that she realized that this wasn't right.

"Dear Randy, and Janice, and Pat: I know you won't be able to read this. But Mommy will read it to you. I would give my right arm to see you guys." She gave a lot more than her right arm. She practically gave her soul. "I hope you will forgive me for what I have done to you. I will make it up to you guys too. Love, your Sis."

I submit, ladies and gentlemen, that there isn't one iota, much less a word, of denial in those letters. In fact, those letters, I think, show exactly why this child came back from Wrangell, why she came back into the home of this defendant and lecher, why she was willing to forget and forgive. She was doing it for those children and for the family name. That means quite a lot in a small town like this, as you all know better than I. She was willing to forget and let bygones be bygones.

And then what happened? After this defendant whisked her down into the lawyer's office and the statement was extracted from her, and a copy of it quickly brought over to the Marshal's Office by the defendant, who accompanied her, incidentally, to make sure she signed it, then what happened? One afternoon she goes up to see the kids. After she gets there she finds the defendant there. He admits that he was alone with her. He never denied it on any of the dates. He admits he was alone with her. And what does he do? He tells this child, "I don't

think I can control myself." And shortly after that she received another grand jury subpoena; she had already had one before that. And he tells her not to say anything to the D.A. and not to sign anything.

I can't think of one piece of evidence that was brought out in this case, either demonstrative or these letters or testimony on the stand, I can't think of one scrap of evidence which would tend to show, or to disprove the charges that were made here. The Government made every attempt that it could think of to get to the truth of this case. I believe, and I hope that you believe, that the Government's evidence in this case has been convincing. In fact, it has been, as I said on my opening statement, it has been overwhelming. I doubt if there will be another case of this kind, as strong, in this courtroom, and I hope that on your deliberations you will take all these matters, that I have just briefly outlined to you, into account and that you will find this defendant guilty.

Whereupon Court recessed for five minutes, reconvening as per recess, with all parties present as heretofore and the jury all present in the box; whereupon the trial proceeded as follows:

The Court: The defense may make its argument.

Mr. Gilmore: May it please the Court, ladies and gentlemen of the jury, it is my intention, because of the nature of the charges in this case, to discuss the evidence in this case from the defendant's viewpoint with you dispassionately and calmly and to the best of my ability.

My special reason for that is that because the sinister thing about a charge of this kind is that simply because one is accused of an offense of this kind it just normally raises great prejudice in the case. Naturally, the charges are in themselves revolting, but you have to be mindful that you must set aside the allegations in the indictment and not necessarily mean that because the charge is there and the recitation is there in the various counts of the indictment that the defendant is thereby automatically guilty of them. It is your duty and your great responsibility to determine whether the evidence is worthy of your belief and convinces you, as the law requires, of the guilt of this man beyond a reasonable doubt of those charges. So, don't associate the heinousness and the repulsive character of the charges themselves with guilt. In other words, don't ever be guilty yourselves of finding the man guilty by associating simply the allegations in the indictment with his guilt without having worthy testimony that convinces you beyond a reasonable doubt that he is guilty of them.

Now, too, Mr. Ziegler, who of course is an illustrious, long-practicing attorney in the Territory of Alaska, and I will both argue and both discuss the defendant's case with you and all the evidence that has been presented here, and we will of course try not to overlap. There might be certain things of course which will be repeated, but not intentionally. I don't intend to discuss at all, he will, the very, very, very important piece of evidence, namely, Loretta's statement, which was made in a cool, calm,

dispassionate manner with every opportunity for reflection and under circumstances which you will well recall.

You know, the fallacious, sometimes, reasoning is that because these charges are made and then a defendant is brought in and associated with them that you necessarily must conclude that he is the guilty man. See, no one else is brought in; so, therefore, you have the charges and you have this man accused. Be mindful of that.

Of course the District Attorney will say, ladies and gentlemen, and I submit to you there was no corroboration of these acts, that acts of this kind are not committed in front of other people. Well, I ask you to think further, ladies and gentlemen. Acts like this of course aren't committed in front of other persons. But don't you think, or do you think that Loretta's word alone, knowing Loretta now as you do, do you think it convinces you sufficiently to find Rollie Lindsey guilty of these acts? Don't you think that, over the entire period of years that they have charged that these acts were going on in that house, that there would be something in corroboration of them if they were true over a long period of time? Well, I do, and I submit that you could reasonably come to the same conclusion.

Now, ladies and gentlemen, as I say, the Government is asking you to convict this man on the testimony, and virtually the sole testimony—there is no other direct testimony in support of Loretta's testimony—on the sole testimony of an admitted liar. She is that by her own admissions. She is that. And

once of course you find a witness who has been admittedly false in one part of her testimony, you are permitted to disregard her testimony in its entirety if you choose.

What is more, ladies and gentlemen, you are being asked to convict on the testimony of a person who has admittedly falsely accused another man of rape on her, and that charge was made following the charge made against her father. I refer of course to Jack Krepps, the Deputy United States Marshal at Wrangell, with whom she had been living for approximately four months during this past summer. Think of the gravity of that. In other words, if she would charge Jack Krepps, and having in mind her motive, why wouldn't she charge her father?

I told you in my opening statement that you would find her cunning and deceitful and worldly-wise. You have had the opportunity to study her demeanor, and you have a right to take that feature into consideration in determining whether or not the witness is telling the truth. You are supposed to reason this thing out and use the same good reasoning as jurors here that you do in the important personal affairs of your life.

Now, let's consider, ladies and gentlemen, Loretta's motive in this case. There is a motive all right, her motive in charging her dad with these offenses. Well, it was, obviously, so that she could get away from home. Oh, not so that she could just run away. She did that, admittedly, several times. But so that she could get away and stay away suc-

cessfully and be free of the parental control, which the law permits the father to exercise over a minor child. Well, there is evidence of that, and I think it is clear, ladies and gentlemen, from her writings, from the testimony of her father's mother and from her very own statements that she wanted to get away. She put it down. Fortunately, we have that in writing, and it is going to be before you, and it is in her statement.

Now, when it comes to something like that, to a motive, you are not to look at the motive, as far as it motivating force goes, in the same manner, in the way that you might look at it, because you have to look at something like that objectively. Sometimes we read of sensational murder cases where the motive was so and so, and you say to yourself, "Well, what in the world would a man commit a murder with that motive for?" That is the way you think. You don't reason that way. You reason objectively. Is it reasonable under all the circumstances for her to have been motivated by that motive? That is the way you think, objectively, as she would think, not as you would think. We read, as I say, sometimes where murders are committed only for the thrill or the theft of five dollars. There have been murders committed for that motive.

Now, the motive in this case is clear. Look at it from her viewpoint. She was unhappy. She said that there was too much discipline, too strict. She was defiant. She was incapable of submission to the authority of her household. She revolted from within. So, that is the way you consider and weigh

and decide upon the motive of Loretta. It is Loretta's motive and Loretta's mind, not yours. You see, you can't supplant your line of thinking for hers. That is the way you come to that conclusion if you are going to come to that conclusion.

Now, of course what weighs heavily and tends to give greater support to the validity of that matter, of the matter that I have just mentioned to you, is that the motive in accusing Jack Krepps of having sexual relations with her was virtually the same. That was a similar motive, to get away from Wrangell. How are you going to get away from that? What does it mean? It means she lied. She told us she lied about her father. She told us she lied about Jack Krepps.

Well, of course there was an attempt to rehabilitate her, of course there was, through the drama of playing back the answers to the questions that were given to her, not by the District Attorney, in the hospital, though he was present. You remember the questions and the answers of course up in the hospital were virtually verbatim of the questions and answers given there. So, what does it amount to? A repetition of what she testified to, putting it there once, putting the same thing there twice. But what do you have? You have the one story to consider.

Now, I want to say, don't think that there is anything magical about, and of course they always say, so-called truth serum. It is an ordinary analgesic or anesthetic which is used every day for anesthesia, to put you to sleep, like the barbiturates or like

other anesthetics. It dulls the mind. It lowers inhibitions. It makes you groggy to the degree that the anesthetic is administered, the proportion, the quantity, the proportion to the amount of drowsiness and the converse. But do you think that there is any drug that can go into the mind and pull out the truth?

Doctor Clark testified it is considered, in his opinion, considered unreliable, and he told us what he based that on, that the medical authorities consider it unreliable. But you can reason that for yourselves. How could a physical situation go into the back of the mind, which of course none of us know anything about—the greatest doctors in the world.

Now, they are trying to have you give some magical importance to that, and, as I say, actually it boils down to having the story told over again, only in a very dramatic way, the drama because of a person being half-groggy and being repeated again and then of course being repeated on a wire recorder. It is the drama that is supposed to affect you—again, influences as distinguished from actual evidence. Is there anything there that wasn't there before? And the questions followed almost verbatim, as did the answers, that the questions of Mr. Munson did. The combination—what does it add up to?

And of course getting back to the motive, as I say, her motive in accusing Jack Krepps—just think of the seriousness and of the consequences. Again, you can't think objectively, but doesn't it

make you shudder to think that the Deputy United States Marshal, who lived there at home with his wife, and Loretta living with them, was accused of that and it was later retracted, and what her motive in doing that was. Of course she went a step further too, and besides the sexual act she said she thought she was pregnant. That was her way of putting it when she told Mrs. Krepps.

On top of that there was testimony testified, her father did, and I believe her mother too, to her defiant, spiteful and revengeful attitude and disposition towards him, and he testified that it was continuous, and he cited innumerable instances in support of that. I submit to you, ladies and gentlemen——

Mr. Munson: Your Honor, I object that counsel is arguing about facts not in evidence. There was no evidence of a continual course of spiteful conduct towards the defendant.

Mr. Gilmore: Oh, I don't agree, your Honor. I asked the question and I think it was the response of the defendant that he did.

The Court: Well, I guess the jury will be the best judge of whether there was any such conduct of that kind.

Mr. Gilmore: I submit to you, ladies and gentlemen, that you have an accuser here, who is Loretta, a young girl. She is not the ordinary young girl, youngster. Again, that is why I admonished you right from the start always to think objectively, think, not how you would act. That is not the situation here, or even how the ordinary young four-

teen-year-old girl would act or respond. You are dealing with Loretta. It is her testimony. Don't you see? And, as I say, I submit to you, she is not only not the ordinary young girl of fourteen. You can see that. But, what is more, she is a maladjusted, a maladjusted and an unstable individual, and, I say, more to be pitied than scorned. That is how I feel. But unworthy of belief; I submit to you that she is.

She wasn't much help to to the District Attorney's Office in supplying dates for these charges that took place over the years. The dates were the dates of the birth dates of the three Lindsey babies. Well, quite a coincidence? I wonder if it is just a coincidence. I wonder about that. If it is, what a coincidence. I don't know whether it is or whether it is a planned coincidence or how it came about, but it is a highly unusual and extraordinary situation, when the events were supposed to have occurred the number of times that they did and they just picked the three times when Mrs. Lindsey was being delivered in the Ketchikan General Hospital. It made it difficult for Mrs. Lindsey to come to the aid of her husband on those specific days because they made sure she wasn't at home. She couldn't be when she was being delivered, and of course the delivery dates, the dates of the birthdays, could be checked with the dates of the charges against him. She came to him in every other way. Every other time, all the years she was home, they lived together continuously and harmoniously over all those years, had babies of their own, I suppose, as soon as na-

ture allowed the same, and yet she testified forthrightly and frankly in behalf of her husband that she never saw any evidence of any immoral acts committed by her father on this accuser. That is what adds special significance to the dates charged in the indictment. Doesn't that make sense to you?

That is all I am trying to do, is talk just a little bit of sense to you, because that is the way you are going to reach your verdict in this case—good common sense. They say about it, you know, that it is the most uncommon thing in the world—common sense. If we could all use common or horse sense more in our important personal affairs, we would get along better. We are prone not to. That is what you are going to do and what you should use, is common sense, meaning good, solid, sound thinking. When the story doesn't ring true, when it doesn't ring the bell, you don't have to believe it. You don't have to swallow things, just because they are told you up here, down your gullet. You don't have to take that.

Now, what corroboration is there for Loretta's testimony, ladies and gentlemen? There was evidence about rubbers being all over the rafters upstairs. Where are any rubbers? What about the cotton balls she testified about? Where are they? The rubbers and the cotton balls would make fine evidence in the case, fine evidence, and you could say, "Well, by golly, there is something to it," because she talked about it. I am not pulling things up out of hot air. Now, where is evidence, for instance, of soiled clothes? You know what I mean

by that. Now, where is there evidence of her ever being caught in an act or in a compromising situation, not necessarily an act of intercourse or sodomy, but a compromising situation? If it was done once, of course it would be plenty, like going to a hotel room or doing it at home once on a certain occasion. It would be planned so they wouldn't get caught. Do you think it is reasonable to do it over seven years, with kids coming and going, and the mother there in her stage of pregnancy over probably the last four years, since the oldest is now about three. An expectant mother is confined, generally speaking, to her home. She testified she was home most of the time.

Now, where is the corroboration for Loretta? Oh, I am not saying it should be manufactured or fabricated; far be it; but I submit to you that it would be reasonable in this particular case to have some or for some to exist. I am not suggesting that the District Attorney bring forth something that he doesn't have. It is simply that it doesn't exist. He is not a magician. He is not supposed to make it up. If it doesn't exist, it doesn't exist.

Now, her brother Bob testified for her. Of course that would be reasonable from the camaraderie there that existed between the two of them from their association. He didn't testify to anything important. I will review that now. He did testify and did what he could to back her up. Of course they ran away, respectively, several times, as he did too. But Bob testified he heard Rollie go into the room early in the morning a couple of times or maybe

several times. That is all. He didn't see anything. He didn't see any act. He didn't see anything compromising. He didn't see them in the light of the circumstances or conditions that would lead you logically to believe that they were committing immoral acts. By that I mean undressed or in any other compromising situation. Just saw him go in the room. Period.

Now, if his little mind was working then, as apparently it was there on the witness stand, and wanting to give you the impression that apparently he did, I would think that it would be reasonable for Bobby to have looked over from here over across there. There is no door here and never has been, and of course it is only the last couple of years when they were upstairs. Do you remember? It was 1950 or '51 when the upstairs was constructed. Prior to that they were all like just in a little huddle down in one room, relatively speaking. Look—from there to there, without any door. He wouldn't have even had to open his door. There is a big crack on each side because the door, the frame around it, is unfinished, leaving an opening on either side of the door of Bob's room. He never did. He never looked over. And that is in the light of what he tries to impress upon you now as "I think my dad is doing something improper to my sister"—all those years. Well, I think, even if it wasn't such a relationship between father and daughter, that a boy, a young fellow, a big fellow like that, would be curious if he thought that that was going on.

Those are the things and I am mentioning them to you because they should appeal to reasonableness, and that is the way this case is going to be decided or should be decided. That is the kind of a verdict we want, based on the truth. That is what verdict means—"veredictum" in the Latin—that—no more, no less. Don't you think that is significant? And, as I say, it was only the last couple of years they were upstairs. Don't you think, if these acts were going on, when they were all downstairs, or even upstairs with the mother downstairs, and of course the ridiculousness of trying to infer and have you believe that he would go upstairs, while she was in the kitchen, is a blast to your intelligence, where at any moment by walking upstairs he could have been exposed either by the kids—there was no doorway; you only have to go up the stairs—by the mother or by anyone else. You have to find him virtually insane to have followed a course of conduct which Loretta has accused him of over this long period of years.

Now, as I say, Bob's testimony in corroboration virtually falls flat. He didn't see anything. He didn't do the things that a normal fellow would do so as to have been able normally to acquire information. See? It is something that he reasonably would be expected to do but didn't do. You have a right to consider that too. And then of course in his bumbling way, when he testified that he came down, and the other witnesses did, that afternoon in the Lindsey's home, when Loretta let loose with this charge, he said, "Yes," and what's more he

went upstairs and came downstairs and said, "Here is the evidence," and threw down an empty can of "Trojan" rubbers. There is absolutely no evidence, not one scintilla of evidence, I submit to you, to connect that empty can of rubbers up with Rollie, and we of course are the ones who are supposed to believe him. He said, "Here is the evidence". And of course half the time he was kind of grinning and smiling on the witness stand as if he didn't know whether the story would stand up or not. You remember his demeanor there. At least he would try it anyway. Now, that is the evidence of this man.

Though, ladies and gentlemen, following the charge and when she was taken up, away from home, away from her grandmother's home, out of the City of Ketchikan, up to Wrangell to live with the Deputy United States Marshal there, Mr. and Mrs. Jack Krepps, and when she had time to reflect and think this thing over and think what she had done without any possible influence, certainly no charge can be made there. It was one hundred miles away. She had time to reflect. She told Mr. and Mrs. Krepps in Wrangell and she admitted she falsely accused her father. She did that. Where in the world can the United States Attorney's Office extract anything or even conjure or even suggest anything, that there would be any influence exerted on Loretta that would come from Rollie or her relations? I submit, not a thing. Everything was actually to the contrary. She was free, uninfluenced, but time to reflect.

See? That is where the old mind that God gave

us, if we do a wrong, will frequently correct itself because we have the conscience. Sometimes it catches up with us. We can lie; we can cheat; and we can steal; and we can slander; and we can commit calumny; and we can falsely accuse our fellow man; and we can be inhuman to humans; but frequently the thing rights itself. Loretta's conscience got the better of her. She told the Krepps that she falsely accused her father and admitted her lying. Every single thing that was done following that first admission to the Krepps is consistent with the fact that it was a voluntary retraction right from the start. She wrote her parents to that effect from Wrangell August 22nd before she came back here. Oh, incidentally, she hadn't seen her parents and hadn't communicated with them from the time she left Ketchikan until she got back on the 25th or 24th.

Then after she wrote her parents she was released by the Krepps. She came home. She begged forgiveness. She went to the Lindsey's home. She went to Mr. Lindsey's lawyers. She made a complete retraction and signed it, took an oath before the notary public, the attorney, before she signed it. She admitted she lied about her father. She was told what lying meant. She returned, I believe, she returned home relieved, spiritually probably better off than she had been in years.

Now, after that of course we don't know what influences were exerted, if any, but after that she changed her story again, back here in Ketchikan. Of course, when he says that she thought that was

the end of it, I don't know what inference can be gathered from that. You can draw your own inferences. See? You are entitled to do that.

Now, it is obvious that this child is disoriented. It is obvious. How would you like to be accused by her, or even you wonderful women who have husbands, how would you like to be the wife of a man who is falsely accused by a girl of rape on her? Why, it makes you shudder. You would say, ordinarily, if you weren't chosen as a juror at this term of court and this thing came up, you would say, probably, "I don't think that such a thing could ever happen." At least you would like to make yourself think that it couldn't and so put yourself at ease because it is so reprehensible. That of course is just as reprehensible as anything can be. It is bad enough that such a thing happens, but how horrible to be falsely accused when you didn't do it, and yet the charge was made. What is worse? What is worse? So I say, I submit to you that she is a disoriented child, a disoriented person.

And I am asking you, ladies and gentlemen, to be mindful of your oaths as jurors that you will return a verdict only on meritorious, only on worthy, convincing, reasonable, truthful evidence. Don't desecrate your oaths and don't sully the halls of this temple of justice. This is a hall of justice. We want it left unsullied, but it won't be if verdicts are to be found on testimony of that kind.

Now, ladies and gentlemen, society will find a mate for this young lady. Society will. They will rehabilitate her. They will help in rehabilitating her

and stabilizing her, if possible, so as to prevent—it is society's duty—so as to prevent, if possible, the occurrence of such false charges against any other man.

Now, of course, the District Attorney will tell you that you are but a link in the chain of law enforcement, and, therefore, law enforcement depends on your verdict. That in itself is a blindfold, ladies and gentlemen, and it can be highly fallacious reasoning. You, ladies and gentlemen, are the bulwark of our whole system of justice. You stand between the accused, who is innocent until proven guilty—see—you are it; you are the whole thing. You are the most important part of our whole system of justice. You, the trial jurors, the sole triers and determiners of the facts in the case, you and you alone, subject to the law which is applicable, which the Court will instruct you on, are the sole judges. Nobody can invade your province. That is why it is one of the highest duties of citizenship, and you are now coming in to about to exercise the responsibilities in connection with it.

Be mindful, be mindful before you find a verdict that it is worthy, that it is based on meritorious and worthy evidence. If it isn't, don't convict. Your conscience should be your guide. It is just as much your duty, don't forget, and you will be instructed so, to free an innocent man or one of whom you are not convinced of his guilt beyond a reasonable doubt, as it is to convict a guilty man.

I think it was pretty significant that after she confessed to Jack Krepps in Wrangell about her

lying about her father that he didn't take much time before he got her under way and notified other law authorities, got her on a plane and got her back here. Of course you can draw your own conclusions as to the circumstances of her providing to come back home after making the statement concerning the charges of her father. You have a right to consider those things that actually happened in the light of the time that the events occurred.

Now, there is nothing in corroboration. I can't help but be impressed by it. No rubbers; although there was testimony about it over the period of years. Is it likely not that something would have been found in that regard, one or some cotton balls, if they were used all the time? No. Just the empty can of condoms that Bob apparently went up to his room and got and brought down and threw down.

Now, ladies and gentlemen, I am going to call your attention before I conclude to something that I think is of tremendous significance in this case, and that is the testimony of Loretta with reference to the successive acts which she said followed a pattern in which there was seldom any variance. You will remember that, and you will remember her testimony in that regard. And you weigh this well. Ladies and gentlemen, Loretta testified on direct examination that the defendant's supposed immoral acts on her followed a consistent pattern in which, as I say, there was very little, if ever, any change.

She testified as follows, substantially, that he,

Rollie, would commit sodomy on her by means of using his mouth on her body, her private parts—(A). (B) Then he would put his privates to her mouth, following which she described carefully and in great detail and exactness how she disposed of the fluid from her mouth—first, by spitting it out in the toilet or in the washbasin downstairs; secondly, by spitting it out into cotton balls. (C) Next she testified and carefully that the defendant would then put on a rubber and have sexual intercourse with her.

Mr. Munson: I object, your Honor, that it is not the evidence.

Mr. Gilmore: That certainly is the evidence.

Mr. Munson: That is not the evidence, your Honor.

Mr. Gilmore: It certainly is.

The Court: No; I don't recall such evidence; but the jury will remember it, I guess.

Mr. Gilmore: Yes. Now, ladies and gentlemen, following that and following the orgasm from the sodomous act, he would put on the rubber and then have sexual intercourse. That was Loretta's testimony.

The Court: The testimony was that all he would do would be to lubricate it in her mouth, but the jury is the ultimate judge of what was said.

Mr. Gilmore: Yes, that is true; but of course, your Honor, I can't help but get around what she spit out from her mouth.

Now, ladies and gentlemen, under the law at this time this defendant stands innocent. He is presumed

to be innocent until he is found guilty beyond a reasonable doubt, and you must find that, as I said before, that evidence convincing and meritorious. If you believe that Loretta lied, falsely accusing her father, falsely accusing Jack Krepps, which she has admitted she has done, you have a right to disbelieve her in all aspects of her testimony. How can you take a chance on being sure of guilty beyond a reasonable doubt of this man's guilt. On the one hand she accused and then said she lied in accusing him, and she accuses another man. She says she lied about that, and she comes up here and wants you to convict a man on that testimony. Ladies and gentlemen, I submit to you the evidence in the case against Rollie Lindsey is not convincing and lacks the merit for which you can base a verdict of guilty against him. I ask you to acquit him and send him home to his family. They love him.

The Court: The argument will be limited to an hour and fifteen minutes to a side. That means that the prosecution has thirty-five more minutes, and the defense has thirty more minutes. You may make the remainder of the argument.

Mr. Ziegler: May it please the Court, and you ladies and gentlemen of the jury, we have been in this case, so far as you are concerned, all week. So far as the defendant's attorneys are concerned, particularly myself, it has not only been all week but it has been every night. I hope and I know that you appreciate the responsibility that rests not only on ourselves but on the District Attorney in a case of

this kind where the effect of your verdict is so much. I think you do.

And now, ladies and gentlemen, I will try not to overlap the argument and repeat the identical things that Mr. Gilmore has said with respect to the testimony of the various witnesses, but I think first you have got to consider the defendant in the case and you have got to look at his record as is before you. The man stands before you with nothing against his record during the time since 1939, which would be fifteen years, that he has lived in this community. If the man was a degenerate such as has been described in this case, don't your common knowledge, your experience in life, indicate that something of that nature would have developed at home?

Now, look back at the very inception of this whole thing. Mr. and Mrs. Lindsey adopted these children. I contend that anyone that goes and takes two orphans and waifs, practically, into their home with the ensuing financial responsibility, and the worry and trouble they had, as the testimony shows, at least the father didn't do that to bring into his home some girl whom he was going to ravish. You know people who have adopted children, and they do it from one of the most noble motives in the world. That is an indication of the kind of person that he is in the first place. So, I am going to talk to you of your own common knowledge, your experiences and the inferences that can be drawn from the testimony in the case.

Now, let us look at the first time this situation

developed. What is the testimony? The testimony is that Loretta made this statement about these misdeeds to the Riewolds and other people. As soon as the grandmother heard about it, what did she do? Now, the grandmother, you can take it into your common knowledge that the grandmother must have known the type of girl that Loretta was. She lived close by and no doubt knew all these things that had happened in that family. What did she say? What would you do if it was your grandchild? Wouldn't you say, as she did, "Let's look into this thing. Let's investigate it. Let's check it and see what there is to it," knowing Loretta's tendency in the past? Wouldn't you do the same thing? It is a perfectly natural thing, and she went on further to say, "If then it becomes necessary, we will take it to court. It can be taken to court." She told you that, and I submit that is the exact reaction that any of you people would have done under the same circumstances.

Now, the next situation developed. Mr. Lindsey heard that she had made this charge. Now, look at that. He heard that he had been accused of one of the most revolting crimes known to nature. If Mr. Lindsey had done these things—now use your reasoning—would he have gone about his business and tending to his log boom? No charge was filed against him. He hadn't been arrested. Wouldn't he have immediately done everything within his power to stop and suppress that girl from ever telling that story? What would you have done? Ask yourselves; I ask you; and answer yourselves, answer the ques-

tion, how you would have reacted under those circumstances.

She could never make me believe and I don't think she can make you believe that Mr. Lindsey at that time even dreamt that such an accusation would be made against him. He apparently passed it off as a foolish, spiteful remark of some kind. He didn't drop everything he had to do and stay right here in town and try to hush that matter up. I know what I would have done had it been me, and I think I know what you would have done. You wouldn't have gone about that business, letting this girl be running around telling everybody what her father had done.

Now, ladies and gentlemen of the jury, it is not a pleasant matter for attorneys to have to get up and attack anybody. God knows I have been practicing law for forty years and I have just about reached the end of my career, and it makes no difference to me about winning or losing a case any more, but it makes a lot of difference to me to see that an innocent man is not convicted. I have seen these cases; I have seen them; I have tried them; and I know what the defendant is up against. I know how easy it is for the jury to say, "Well, if these things are not true, why does the girl make the charge?" That is the natural reaction. The mere fact that I am accused or you are accused of this type of a crime, due to its revolting nature, immediately creates in the mind of the laity, that is, people like yourselves, who have not had too much

experience in these matters, that the defendant is guilty right away.

This isn't the type of case—although that is the law, where the Government has to prove guilt beyond a reasonable doubt—this is a type of a case where a man has to almost to a jury prove his innocence, and it is due to the very thing of prejudice. I want to tell you, as I say, I have seen these cases and I am alarmed and I shudder and I worry about the possibilities of a man being convicted on account of the prejudicial nature.

Experience in the court warns us we must be cautious. As one of the learned justices, Matthew Hale of England, said in these kind of cases—a man who had long experience, and the courts have generally approved his statement—to the effect that it must be remembered it is an accusation easily to be made, hard to be proved, and harder to be defended against by the accused be he ever so innocent. And we must be more cautious in trials of offenses of this nature unless the jury and the judge may be greatly imposed upon, without great care and vigilance the heinousness of the offense charged many times, I say, many times in this world, transporting the jury and the judge with so much prejudice and indignation that they are overly, hastily carried to the conviction of the accused on the confident testimony of false and material witnesses. That is the experience and that is the situation we are in.

Now, ladies and gentlemen of the jury, I am mentioning these things to you to impress upon you the

seriousness of the situation. It is no pleasure and it is distasteful to me to have to say an unkind word about Loretta or her brother. God knows we get no pleasure out of it, but it is our duty as an officer of this court to point out to you things pertaining to their testimony, to their character as you know it, and their demeanor on the stand, in order that you may properly weigh the weight of that evidence.

Now, ladies and gentlemen of the jury, as Isaiah said in The Good Book, let's reason this thing out together—let's approach the problem from reason. That is an admonition from the old days, and it is an admonition as good now as it was then.

Do you think that it is a reasonable story that these acts testified to by Loretta could have occurred in this house in the manner she testified to and Mrs. Lindsey not have suspected something or known something about it? It is an unreasonable story. Is there anything in this case, outside of the testimony of Loretta, perhaps, and her brother, indicating the truth of her story?

Now, you have before you statements by Loretta that these acts occurred while the wife was in the house. Her testimony is on one occasion or more, while Mrs. Lindsey was cooking dinner, Rollie Lindsey went upstairs and committed these acts. If the man, any man, had done these things, he should be on trial for insanity not on this charge. That is not reasonable. It is not a reasonable story at all.

Now, then, as corroboration we come to the testimony of the boy. The Court will instruct you that you can weigh the value and truthfulness of testi-

mony by the demeanor of the witnesses on the stand. What did Bob testify to? I am mentioning things now that Mr. Gilmore did not cover, I think. Bob testified to this incident about the boat. His testimony that he wanted to leave with you is that the boat went out in the channel and drifted from the New England Fish Dock to the end of Pennock Island. And you remember how indignant he got with me when I tried to fix some spot where he claims he had seen the boat. Now, ladies and gentlemen, I don't think that is true and I don't think that you believe that is true whatsoever. In the first place, common knowledge tells us that, if you cast your boat out here in the channel from the New England and permit it to drift, it will ground before it ever gets——

Mr. Munson: Excuse me, counsel. This has all been stricken from the testimony, your Honor, as to the boat's position in the channel.

The Court: I have held that the only thing that is material about that testimony is whether or not the defendant was alone out on the boat with her, not the currents or tides or the precise location or whether the lines were thrown off.

Mr. Ziegler: I understand that is the Court's ruling then.

The Court: Yes.

Mr. Ziegler: Now, we get down to the next part of his testimony. When this thing broke, he shows up with an empty can which at one time had rubbers in it. Where did he get the can? If Mr. Lindsey had used that in perpetrating these alleged

crimes, there would be another case of insanity of leaving that up there were it could be found. Ladies and gentlemen of the jury, I tell you in all sincerity that you are justified in believing that Bob Lindsey deliberately got that can some place or one of his own and brought it down there to help make this charge stick.

Now, there was testimony, as to the use of rubbers, by Loretta. It would do us no good to go to the Lindsey's drugstore and have the proprietor or the clerks come up and say that during that time Mr. Lindsay never bought any. That would not be of any information to you. But on the other hand, had there been rubbers in the house, had Mr. Lindsey during that period purchased it, the United States Attorney unbeknown to him could have found out the drugstore at which he dealt and tried to establish whether he had actually purchased it. I am not accusing them of doing anything they shouldn't do or failing to do something they should have done, but we feel it is a matter to be taken into consideration.

Now, then, Mr. Gilmore covered pretty well and explained to you the incredibility of Bob's story about what happened upstairs. Here is a story of many acts of the most revolting nature having been committed in a room upstairs with the door open, no door to it, and the defendant's wife on the premises, in the house, and the brother right across the room. Does that appeal to your reason or your logic?

Now, then, we come to the question of the corrob-

oration of the condition of Loretta as testified to by Doctor Stagg. You know what the testimony was. Doctor Stagg didn't tell you and he couldn't tell you that it was Rollie Lindsey who was responsible for that condition. Now, here is where you have got to use your common knowledge again, and, if you believe that the condition of her organs was such to indicate that she had sexual intercourse, is it unreasonable to believe that a girl of that age and that development running around this town didn't have intercourse with boys, as some of them do, and we know it? Now, are you going to say, "Because that condition existed it proves to my satisfaction that Rollie Lindsey is responsible for it"?

Now, the next question comes, and it is going to be stressed on again; it has been throughout the trial; and it will be in the closing argument. Well, now, if these things didn't happen, how could the girl tell it in this detail? I submit that girls of this age, not all of them, some of them, know more than their elders about those things. The District Attorney here last week was surprised to find out how much these little girls, some of them eleven or twelve years of age, were drinking and out on parties all night.

My belief is that anything Loretta didn't know about it could be supplied by her brother so far as details go with respect to these things. He is sitting here. You judge his demeanor, and is his testimony the kind that you would act upon in the most important affairs of your life? Would that carry sufficient credence and conviction for you to say, "Well,

I am just as sure of investing this sum of money as I am of the truthfulness of Bob Lindsey's testimony"? If you don't believe him in one thing, you can't believe him in another, and it was explained to you. He testified that he suspected something was going wrong upstairs. He played possum, let on he was asleep, and he never got up, after he claims Mr. Lindsey went into the room, to go over there and protect his sister. It is inconsistent, contrary to all actions of a normal person.

Now, following that, I want to take up with you the question of this so-called truth serum. It is a misnomer. It is a drug that renders a person half-way conscious and halfway unconscious.

Mr. Munson: Your Honor, the counsel here is repeating everything that the other counsel has testified to. It is just double argument.

The Court: That is why I imposed the limit, because I thought that his co-counsel covered practically everything and that there couldn't be another argument of the same length without repetition, so I have limited him to thirty-five minutes, and he still has about twelve minutes left.

Mr. Ziegler: That is just preliminary, your Honor, to a portion of that testimony that I don't think Mr. Gilmore covered. The testimony in that connection was that it has the same effect as morphine or any other drug or sedative; the only thing, it enables a person to remain in that condition longer and is enabled to do it easier.

Now, in that connection you will recall that Mr. Munson indicated that when Loretta gave that state-

ment in our office to my son that they were not there; they were not invited. I want to call your attention to the fact that, when this serum was administered, we were not invited there. Maybe we had no right there. I don't know. But it would seem fair to me, if anything was unfair about the other, that we should be there or notified about it to have a doctor there to protect the interest of our client, but it wasn't done.

Now, in the testimony concerning that very thing you will recall the condition that was shown by the playing of the record and the doctor's testimony, and you will recall that the questions were put to Loretta by the doctor and the manner in which the questions were asked. Naturally, a person in that weakened condition is going to respond the way she thinks the people who brought her there want her to respond. That is a simple, easy way to prey on the mind of this girl.

Now, all that that truth serum test, so-called truth serum test, proves is an opinion by Doctor Anderson. He said his opinion is from that test that she was telling the truth and couldn't tell a lie. I wonder what his answer would be had Mr. Lindsey taken a test and told the same story that he told the Court. Would it still be true that a person under that influence couldn't tell a lie? Think about it. Answer that question.

And before I forget it, ladies and gentlemen of the jury, when you get into the jury room please read the statement signed by Loretta and please read the Court's instructions because you have got

to base your evidence on the evidence and the Court's instructions—I mean, base your verdict—and once you do that no one can question your verdict. You are the supreme power. The President of the United States cannot criticize you or question your verdict.

Now, then, with respect to Doctor Anderson's testimony, I have had experience with psychiatrists giving opinion evidence; the Court has; the District Attorney has; and we know it is an absolute fact that you can get two psychiatrists to come into court on the same set of facts and give you diametrically opposed opinions on those facts to the utter confusion of the court reporter and the bewilderment of the jury, because they are not swearing to a fact; it is only a matter of opinion. Psychiatrists at one time had a little better standing in the medical profession than they do today. It has been said by various people that a psychiatrist is a man who contends he knows everything there is to know about anything until he winds up knowing everything there is to know about nothing. That is the way a lot of people regard the weight and effect of the testimony of a psychiatrist. It is only on an opinion, and it doesn't constitute evidence of fact. Courts accept it. They are permitted to testify under the instructions of the Court that it is purely a matter of opinion.

Now, ladies and gentlemen of the jury, I have tried the best I know to show to you the inferences and the logical deductions and conclusions that you can draw. If I have said anything at all in the argument of this case that doesn't appeal

to your logic, I know you won't pay any attention to it. I know you will disregard it and throw it out the door. I have tried to explain the evidence. I have tried to point out where the evidence in our opinion is unreliable. If you do not agree with me on any particular point, as I say, I don't want you to be influenced by anything I have said, and I know you won't.

Now, ladies and gentlemen of the jury, my time is about used up. The District Attorney will reply to our argument, and remember this, that everything that the last person who addresses the jury says, if we had an opportunity to come back again, we could explain to you some of the points that would be made, and we ask you to take that into consideration and weigh these things, which are said, very carefully. As I have often said in forty years of practice, I would surrender the presumption of innocence that follows every defendant in a case of this kind if the attorneys for the defense could make the closing argument to the jury. The last impression often has a terrific effect because it can't be answered.

Now, ladies and gentlemen, in conclusion I want to ask you in the interest of justice to consider this evidence, the character of the witnesses who furnished any information, and for God's sake don't let your judgment be influenced on account of the prejudice you might feel in connection with the nature of the charge. I explained to you how the courts look upon this type of a case. The utmost caution must be used unless an innocent man is

convicted entirely on account of the prejudicial nature of the case.

I am glad that the ordeal of a trial of this kind is about to be over as far as I am concerned because, as I explained to you, it certainly hasn't been pleasant, but as an officer of the court and as an attorney before this bench and bar, when a man comes to you with his trials and troubles and you believe in his situation, if you are an attorney who has any conscience, any feeling, you are going to devote your time and your energy, no matter what it takes out of you, to do everything humanly possible to bring before you ladies and gentlemen of the jury the facts, the evidence and the logic of it and the inferences to be drawn therefrom.

This I have done, and I hope and trust, and I know you will, you will bring in the verdict based on the evidence and the inferences that you can draw from it and the instructions from the Court, and I feel sure that from this day on, when that verdict is rendered, you will never, if it be guilty, be disturbed the rest of your life when you go to bed, when you go to church, and a doubt rises in your mind—was I right? Did the evidence justify that kind of a verdict? That is something you have to consider, not only that but the welfare of the defendant and his family and his children, and in that connection I think you must be convinced that Mrs. Lindsey never believed this story; you saw her on the stand; that she never had any reason to believe it, because no woman, knowing or believing, having reason to believe her husband was such a

degenerate, would stand by him like Mrs. Lindsey has done. That to my mind is stronger than any evidence that can be produced in this court. That to me is convincing and should be convincing to this jury.

The Court: Ladies and gentlemen of the jury, court is about to recess to 1:30. You should bear in mind at all times the admonition heretofore given you as to talking about the case or permitting anyone to talk to you about it or arriving at an opinion. You may recess court to 1:30.

Whereupon Court recessed until 1:30 o'clock p.m., November 26, 1954, reconvening as per recess, with all parties present as heretofore and the jury all present in the box; and the trial proceeded as follows:

The Court: The prosecution may make its closing argument.

Mr. Munson: May it please the Court, ladies and gentlemen of the jury, I would like to remind you now that what I predicted would take place did take place. The defense counsel put Loretta Lindsey on trial and put Robert Lindsey on trial and made no mention of the defendant's trial, which is what we are here for.

Now, the defense is never satisfied with the Government's evidence in any case. In a case of this kind they always demand more, more corroboration, more proof, even though the very crime itself by its very nature is secret, hidden. From what I gather from the defense's argument, the case isn't proved to them unless there are photographs of a

sodomous act or of a rape. If we had that kind of evidence, ladies and gentlemen, we wouldn't be here on trial—this defendant wouldn't be here on trial.

There was plenty of corroboration in this case. Take Doctor Stagg's testimony; that is pretty good corroboration—a fourteen-year-old girl developed like an adult woman, married woman, used to regular sexual intercourse. That is not easy to explain away, and they couldn't explain it away by saying that she might have been out at night. Why, the defendant himself on the stand said the children were kept under pretty good discipline. If she had been running the streets at night, ladies and gentlemen, there would have been evidence in the case to support that.

The defense made much of this accusation that was elicited, or the accusation against Jack Krepps, which Loretta readily admitted on examination. Now, that accusation was just about what you would expect a kid to make up who is going to make up an accusation out of any sex crime. She just said to Judy, "Someone had intercourse with me that you know real well," no details, just a flat accusation like that. Nobody paid any attention to it. Nothing serious has flown from that accusation. It was pure kid stuff to get away from Wrangell, to get back here amongst her family and friends.

Why did she choose that method? Because she knew that when these charges were filed against the defendant in this case that she was almost immediately sent away from Ketchikan, and in her

childish mind she figured that the reverse would be true—"I want to get back to Ketchikan so I will make an accusation." Well, what I want you to notice is the lack of detail, no detail, just an accusation. If this girl were hostile towards her father, which they never proved and which I don't believe ever existed, would she sit down and manufacture a tale of detailed rape and sodomies over a period of seven years? I submit she would not. She would have said, "My father raped me last week," or some such thing, and there wouldn't be too many corroborating details if it were untrue.

The next thing that the defense relied on was this statement, this statement which was practically the result, the end product, of those letters, those yearning letters to come back to the Lindsey children, to come back to Ketchikan. She no sooner gets back than she is whisked down to the office of a lawyer and words were put in her mouth both by an experienced attorney and by the defendant himself, and that afternoon she comes back to the office, and who is there? The defendant is there, and she no sooner signs a statement and it is in the hands of the Marshal. Why wasn't the Marshal notified before? Why wasn't he there, or somebody from my office? That is my witness; that is the Government's witness. They talk about legal ethics, when they referred to this truth serum test—oh, how unethical it was.

Mr. Ziegler: If the Court please, we made no criticism of counsel at all. We made no reflection upon legal ethics at all. We criticized justly what

we think of an expert witness, but there was no question of ethics.

The Court: I think there was something said about the propriety, however——

Mr. Munson: It was said, your Honor.

The Court: ——of taking the statement of the prosecuting witness under the influence of this drug without calling you.

Mr. Ziegler: That is correct. I did mention that.

Mr. Munson: The propriety was brought out at the trial and it was brought out in the argument of both counsel, and the jury, I am sure, will remember that. Now, propriety, ladies and gentlemen, that is the same thing as legal ethics in my book. Here, I came back to Ketchikan and I was faced with an affidavit or statement that had been wrested from this witness in my absence, and without any representation by my office, by the defendant and by defense counsel. Now, that is unusual. But what I did, I interrogated my own witness and put her under the influence of a drug that would inhibit her ability to fabricate, had her examined by a psychiatrist so that he would be able to detect a fabrication. Why? Why did I do it? Because I wanted to find out what the truth was. There is no duty on my part in interrogating Government witnesses to have the defense counsel there. In fact, it is a patently ridiculous suggestion. It is never done.

Now, the other thing that the defense tried awfully hard to do here in the trial and never succeeded in doing was trying to show that Robert Lindsey was hostile towards the defendant. And

what did he say? He said, "I like him. He has done a lot for me." What did Loretta say? She said she wanted to get back; when she was in Wrangell, she missed them; she missed the kids, and she missed her aunt. Oh, I don't think she missed the defendant. How could she? But she did miss the family influence. That is not hostility, ladies and gentlemen. That is far from it.

The only thing that the defendant could produce in the way of a hostility-provoking situation was one time in the kitchen about two weeks before April 10th or 12th, when these charges were filed, he slapped her, and that is supposed to be the motivating factor to induce this girl to make up a bunch of lies. Why, it is absurd, and it doesn't explain any of the testimony in this case. It doesn't explain why she was going over to Don Riewold's house crying on Saturday, April 10th.

And this business about running away from home, I have already mentioned that once. I don't want to press it because it is just too obviously ridiculous. This girl wanted to get away from home, ladies and gentlemen, just for one reason, and that was to get away from him. They call it a motive, running away from home. They call it a motive. I call it an escape. The entire defense of this case has been that statement. And, yet, the defense counsel dwells on motive, trying to show that she had a reason to make up these charges because she wanted to get away from home.

Now, the truth serum test has been emphasized by defense counsel. I want to call your attention

to the fact that this truth serum test was not taken in a vacuum. It was only a part of a psychiatric examination that lasted for at least two days in October and one day in April, and standing by itself it would not be overwhelmingly significant, but take into account that an expert psychiatrist had given this girl innumerable tests, including this truth serum test, and concluded after knowing all the facts, including this childish accusation against Jack Krepps, he said that this girl is mentally sound, she is not a liar, and she could not have fabricated a story of this kind.

In rebuttal we had Doctor Clark get up there on the stand, obviously having just quickly looked over a couple of medical journals, completely missed the point of the truth serum test as it was used in this case, and said that he didn't think it was very reliable. But he doesn't know because he has never given one.

The defense asked you to think objectively and said this is not the ordinary young girl of fourteen. Well, we agree. How could this girl, after seven years, seven and a half years, of the treatment that she has undergone, be an ordinary young girl of fourteen. I think she is an extraordinary young girl. I think she is amazing. Maybe she is to be pitied, as the defense counsel has said, but she is not unstable, and she is not maladjusted, and she is not unworthy of belief, and we have some pretty good expert testimony plus plenty of corroborating testimony in this case that would indicate that. Think of what Doctor Anderson said about this

girl. He knows her and her mind better than anybody in this case.

Then they point out these dates of the births of the Lindsey children. I told you before in order for us to frame an indictment we have to have dates. We can't just say that for the period of seven years this man has been raping and committing sodomy on his daughter. You have got to give him an opportunity to know when these events occurred, and the indictment is written in the following fashion—that on or about the 22nd day of October, 1951, he committed rape, and in the later count sodomy on that date, or on or about that date; on or about the 23rd day of October, 1952, he committed rape and he committed sodomy on that girl; and on or about the 27th day of February, 1954, he raped her again and committed sodomy on her; and the last count of the indictment says that he tried to influence her to cover up material testimony before the grand jury so as to sabotage this case and obstruct justice. Now, that is in essence what he is charged with.

But think of the testimony. Think of what was brought out in this case. It was brought out that he had attempted rape on the Diamond T when she was nine years old, that he had committed sodomy on her when she was seven and eight, and even this New Years he committed an act upon her, and what is his answer to all that? "I don't remember." He denies—of course he is here because he did deny the charges, but he just doesn't remember what happened. He can't remember any-

thing about those dates except that a baby was born on the dates charged in the indictment. The very fact that he tried to influence this girl, the very fact that he dragged her down to the lawyer's office, is a significant factor to be considered by you in arriving at your verdict.

They say, the defense counsel says, "Don't believe Loretta." I ask you, who are you supposed to believe then? Mr. Gilmore or Mr. Ziegler? Because, certainly, there was nobody else on that stand that gave any evidence tending to disprove any of these charges in this case.

They said, "Where were the rubbers in the rafters? Where were the cotton wads?" I think the answer is simple. Ask the defendant where they are. It was his house. They made the search for the evidence. We didn't.

They said Bob didn't see anything, even went over here and pointed at this sketch. Bob's room is here. Loretta's room is there. This door was shut but there is a crack in it. Is he supposed to see over in here? "He didn't see anything." Well, he testified that he saw Rollie coming out of the room in his bathrobe, and he also testified that he saw Loretta come out a couple of times and she had tears in her eyes, and he also said that he heard him going in in the early hours of the morning, five or six o'clock, he guessed. They want a photograph. That is what they want. Bob can't look around corners.

They kept saying that Rollie Lindsey would have to be insane to have done these things. Well, he is

not on trial for insanity. Maybe he is insane. I don't know. They said not one scintilla of evidence connected Rollie with this "Trojan" can, not one scintilla. Well, who produced the "Trojan" can? It has been in his custody for seven months. That is a little more than a scintilla in my book.

They said Robert didn't know whether his story would stand up or not. Well, did it? Did they break him down on the stand? Did Loretta's story stand up? They had her up there for three hours. Did her story stand up or didn't it?

They talk about her conscience. Sure, she has got a conscience. I wonder if the defendant in this case has a conscience. Well, it wasn't Loretta's conscience that got the better of her in so far as that affidavit is concerned. The thing that got Loretta was her love, her genuine love, for those kids and for her family, of which he isn't really a part. He is just a fringe member. They call her disoriented, but Doctor Anderson said that she was, considering the circumstances of her young life, he considered her pretty well-balanced emotionally. And then the defense said that society would rehabilitate her, as if she were on trial. I say, what is society going to do about him? He is the defendant in this case.

Sure, the verdict of juries is an important part of the law, as the defense counsel said. I think it is the most important part of the law. We can get up here and introduce evidence forever, but the thing that makes the impact on a community is whether or not juries will return a verdict of guilty and especially in these cases where, ladies and gen-

tlement, you have these young girls, where, if they do have the sense and the courage to make a complaint, and so few of them do, they get excoriated up here; they are smeared; they are called sluts.

Mr. Ziegler: Now, if the Court please, I don't think that is a fair statement to the jury. I know that word wasn't used, and I don't think it could be inferred.

Mr. Munson: I think the inference was made, your Honor.

The Court: I don't have a recollection of the evidence sufficient to pass on that. The jury will have to rely on its own recollection.

Mr. Munson: They say, "Consider the defendant." And I say, consider the victim and the potential victims of this type of atrocity when you are arriving at your verdict. This is really a cowardly, a cowardly offense because the chance of detection in the first place is so low, the chance that it would even be brought to light is so slim, and the chance or the opportunity to get someone that would be able to get up there on the stand and tell you what happened to her is so unusual that these cases are rare indeed.

They said you wouldn't have gone about your business, if you had been accused of these crimes, from the beginning. Well, I put it to you this way. If you were guilty, what else could you do? If you had been charged justly of committing a crime like this, what else could you do except go about your business and hope? And that is what he has done—hoped.

He said, "Consider Robert on the stand, and consider Loretta on the stand, how she acted." I say to you, consider how he acted on the stand. Was he convincing and inspiring in his denials, or did he show himself to be what he is, a guilty man, who doesn't want to remember anything that he doesn't have to?

Mr. Ziegler said that he would gladly give up this presumption of innocence for an opportunity to have the last word with you. "These cases," he said, "are hard to prove and hard to defend." Well, I would be glad to let him have the last opportunity to speak, I would welcome it, if he would also take the burden of proof, the burden of proving to you beyond a reasonable doubt that this man is innocent. I would be glad to let him have the last word to do that.

"Let's reason this thing out together," he says. The story to him is unreasonable. Now, what Mr. Ziegler thinks of this story is of no moment. When he said he thought it was unreasonable—why—because he says Victoria would have suspected something over a long period of time like this. Well, I say, I think she did suspect something; she probably did; and she probably knows now, as she sits here in this courtroom, that he is guilty. So what? She is his wife. She has got to stick with him.

Then, they intimated—counsel in spite of their promise did overlap in their arguments, and of course I am repeating myself because I am rebutting what one counsel said. One of them said that Robert deliberately framed him with that

"Trojan" can, and I say again, who introduced the "Trojan" can and who has had it in their custody all these months? Not Robert. The defendant.

This girl has gotten up here and done really a wonderful thing. It has taken courage to do it. I admire her myself. I think Doctor Anderson does too. I think he indicated that on the stand. I don't believe that this girl is fully cognizant yet of just how this man has hurt her, how he has ruined her. In my book this crime is worse than murder, far worse, because this defendant has, he has murdered this girl's soul.

And then, when she gets up here on the stand and tells you about it, he says, "Ah, but her soul is black." Well, what do you expect it to be—saintly—after seven years of debauchery? That is the thing about these cases that is so maddening, is the fact that the more successful the debaucher is, the more completely he ruins his young victim, why, the more they get her up on the stand and characterize her as a liar and a sneak and a thief.

Think of this girl when you are down there, when you are down in the jury room deliberating on a verdict. She has done a really heroic thing. I think that with all the evidence that you have before you, the corroboration, the psychiatric examination of her mind to see how she thinks, the mass of detail that she has told you. I believe that you will find that the Government's case with the help of this young victim has been overwhelming, and that society will take its vengeance in the accepted man-

ner upon this conscienceless man, and bring in a verdict of guilty.

(End of record.)

[Endorsed]: Filed March 31, 1955.

[Endorsed]: No. 14739. United States Court of Appeals for the Ninth Circuit. Rolland Lindsey, Appellant, vs. United States of America, Appellee. Transcript of Record. Appeal from the District Court for the District of Alaska, First Division.

Filed: April 25, 1955.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 14739

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

vs.

ROLLAND LINDSEY,

Defendant-Appellant.

APPELLANT'S STATEMENT OF POINTS

Pursuant to Rule 17(6) of this court, appellant states that the points on which he intends to rely are:

1. That the trial court committed reversible

error in permitting to be introduced over objection a tape recording of testimony of the prosecuting witness while the latter was under the influence of sodium pentathol. That the admission of this tape recording deprived the defendant of a fair trial and that such admission violated the due process clauses of the Constitution of the United States, Amendment 5 and Amendment 14. That the admission of said testimony was in violation of the hearsay rule.

2. That the trial court erred in entering judgment of sentence and conviction by reason of the fact that there was insufficient evidence to sustain all counts of the indictment on which the jury brought in a verdict of guilty because the testimony of the prosecuting witness lacked corroboration.

3. The trial court erred in failing to permit the defense to introduce testimony showing hostility between the prosecuting witness and the defendant's wife.

4. The trial court erred in permitting testimony of a collateral unrelated crime to be introduced. That the introduction of such testimony was highly prejudicial to the defendant and constitutes reversible error.

5. The trial court erred in commenting to the great prejudice of the defendant on various phases of the evidence thereby preventing the defendant from having a fair trial. The appellant assigns as error particularly the comment of the trial judge concerning the location of the defendant's fishing vessel at the time of an alleged act of sexual im-

propriety with the prosecuting witness. The trial judge's comment that the presence of the defendant at the time when the prosecuting witness made a retraction of the accusations against the defendant implied coercion and undue influence.

6. The trial court committed reversible error in striking the testimony of the witness Orville C. Johnson concerning bad reputation of the prosecuting witness for veracity and striking the testimony of the witness Robert E. Baer concerning the bad reputation of the prosecutrix for veracity.

7. The trial court committed plain error affecting substantial rights of the defendant by permitting an expert witness to express an opinion as to the veracity of the prosecuting witness.

8. The trial court committed plain error affecting substantial rights of the defendant in excluding testimony of admissions made by the prosecuting witness to other witnesses relating to the reason why the prosecuting witness had made the original charges against the defendant and why she was willing to drop these charges prior to her making a sworn retraction of the charges against the defendant.

9. The trial court committed plain error affecting substantial rights of the defendant by excluding testimony showing motive on the part of the prosecutrix for making the charges against the defendant and by excluding testimony of the relationship between the child and her adopted parents.

10. The trial court committed plain error affecting the substantial rights of the defendant by strik-

ing testimony of expert witness called by the defendant showing the significance of a rudimentary hymen.

11. The trial court committed reversible error affecting substantial rights of the defendant in giving instruction number 3. Particularly, the portion of instruction number 3 stating that it is undisputed that the crimes were committed at or about the times and places alleged in the various counts contained in the indictment. That the giving of said instruction constitutes a comment on the evidence contrary to legal principles as applicable.

12. The trial court committed reversible error in submitting over objection instruction number 8A to the jury defining the application of the testimony given by the prosecutrix while under the influence of sodium pentathol. That said instruction is contrary to law.

13. The trial court committed plain error affecting substantial rights of the defendant in submitting instruction number 13 singling out the credibility to be attached to the testimony of the defendant. That said instruction is contrary to law and constitutes a comment on the evidence highly prejudicial to the defendant.

/s/ PHILIP W. SCHOEL,
Attorney for Appellant

Affidavit of Service by Mail attached.

[Endorsed]: Filed April 18, 1955. Paul P. O'Brien, Clerk.